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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~1612~~ 1049

ROBERT M. BOYD, HENRY K. SUTTON, AND CHARLES A. BROWN, COMPRISING THE FIRM OF BOYD, SUTTON & CO., APPELLANTS,

vs.

THE UNITED STATES AND JOEL B. ERHARDT, COLLECTOR OF THE PORT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED FEBRUARY 28, 1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1642.

ROBERT M. BOYD, HENRY K. SUTTON, AND CHARLES A. BROWN, COMPRISING THE FIRM OF BOYD, SUTTON & CO., APPELLANTS,

vs.

THE UNITED STATES AND JOEL B. ERHARDT, COLLECTOR OF THE PORT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 3, 1891.

1 United States Circuit Court for the Southern District of New York.

In the Matter of the Application of BOYD, SUTTON & Co. for a Review of the Decision of the General Appraisers as to the Rates, &c., of Duties on Certain Cotton Laces & Silk Laces Imported by them per S. S. La Gascogne. Date of Entry, Oct. 13, 1890. Entry No. 167,661.

To the honorable the circuit court of the United States for the southern district of New York:

Your petitioners, Boyd, Sutton & Co., being dissatisfied with a decision made on or about the 15th day of January, 1891, by the board of general appraisers designated by the Secretary of the Treasury for and on duty at the port of New York reviewing and affirming the decision of the collector of the port of New York as to the rate and amount of duty chargeable on certain cotton laces & silk laces imported at said port by your petitioners, as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of certain cotton laces & silk laces. The same was classified and assessed by said collector for duty at the rate of 60% ad val. Your petitioner-, being dissatisfied with the said decision, gave notice to said collector accordingly within ten days after the ascertainment and liquidation of the duties as aforesaid, setting forth the reasons for objection thereto, claiming the said cotton laces to be dutiable at 40% ad val. under the provisions of Schedule "I" of the tariff act of March 3d, 1883 (Heyl, 325), and the silk laces to be dutiable at 50% ad val. under Sch. "L" of said act (Heyl, 383).

Thereafter the said board of general appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said board herein complained of your petitioners say—

2 First. That said goods are cotton laces, dutiable at 40% ad val., and as such are provided for in Sch. "I," act Mar. 31, '83 (Heyl, 325), and silk laces, dutiable at 50% ad val., and as such are provided for in Schedule "L" of the tariff act of March 3rd, 1883 (T. I. New, —), under which provision of law they are properly dutiable.

Second. That the said act of March 3, 1883, is still in force and unrepealed.

Third. That the so-called act approved October 1st, 1890, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," has not become a law, it never having been legally enacted, as required by the provisions of article 1, section 7, of the Constitution of the United States.

Fourth. That the so-called act approved October 1st, 1890, was never passed by the House of Representatives and the Senate.

Fifth. That the bill which was actually passed by the House of Representatives and the Senate entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," was never presented to the President for his approval, as required by the terms of article 1, section 7, of the Constitution of the United States.

Sixth. That said bill as passed by the House of Representatives and the Senate contained a certain section providing for a rebate of internal taxes on manufactured tobacco and snuff, which was not contained in the engrossed copy of said bill presented to the President and approved by him.

Seventh. That the first five paragraphs of Schedule E, section I, of the said so-called act, providing for bounties to producers of American sugar (paragraphs 231 to 235), are unconstitutional and void, no power to enact legislation of this character having been vested in Congress by the Constitution.

Eighth. That section 3 of said so-called act is unconstitutional and void, in that it delegates to the President the power of laying taxes and duties, which power, by section 1 and 8 of article I of the Constitution, is vested in Congress.

Ninth. That the provisions of section 1, Schedule E, and of section 3 of said so-called act of October 1st, 1890, are essential parts of the scheme for raising revenues to which Congress sought to give effect by the passage of said so-called act, and the other provisions of said so-called act are so bound up with them that their unconstitutionality renders said so-called act null and void.

That said goods were dutiable under the tariff act of Mar. 3, '83, and not under the so-called act of Oct. 1, 1890, under which duties were assessed.

Accordingly your petitioners respectfully pray the court to order the said board of general appraisers to return to the court the record and evidence taken by the said board, together with a certified statement of the facts involved in the above cases and of its decision thereon, and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision and to determine the questions of law and fact involved in the same.

Dated New York, Feb'y 12, 1891.

BOYD, SUTTON & CO., *Petitioners,*
By CHAS. CURIE,
Attorney, 44 and 46 Exchange Place, New York City.

3 [Endorsed:] 233. United States circuit court for the southern district of New York. In the matter of the application of Boyd, Sutton & Co. for a review of the decision of the general appraisers as to the rates, &c., of duties on certain cotton laces & silk laces imported by them per S. S. La Gascogne. Date of entry, Oct. 13, '90. Entry No. 167,661. Petition & summons to return record. Chas. Curie, attorney for petitioner-, 44 & 46 Exchange Place, New York city. U. S. circuit court. Petition filed Feb. 12, 1891. John

A. Shields, clerk U. S. circuit court. Summons filed Feb. 14, 1891. John A. Shields, clerk.

4 Know all men by these presents that I, Charles A. Brown, of the firm of Boyd, Sutton & Co., am held and firmly bound unto the United States of America in the sum of fifty dollars, to be paid to the said United States of America; for the payment of which, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with my seal and dated the 14th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas Boyd, Sutton & Co. have applied to the circuit court of the United States for the southern district of New York for a review of the questions of law and fact involved in certain decisions of the board of United States appraisers made upon the entry of certain merchandise imported by them, per S. S. La Gascogne, Oct. 13, '90, E. #167,661:

Now, therefore, the condition of this obligation is such that if the above-named Boyd, Sutton & Co. shall prosecute said proceeding with effect and pay all damages and costs which shall be awarded against them therein if they shall fail to make said proceeding good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

C. A. BROWN. [SEAL.]

Sealed and delivered and taken and acknowledged this 14th day of Feb'y, 1891, before me—

WILLIAM H. NORTHUP,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate on file in New York county.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

Charles A. Brown, being duly sworn, deposes and says that he resides in the southern district of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

C. A. BROWN.

Sworn to this 14th day of Feb'y, 1891, before me—

WILLIAM H. NORTHUP,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate on file in New York county.

This bond is approved as to form and amount and sufficiency of surety.

Dated New York, Feb'y 14th, 1891.

E. HENRY LACOMBE.

5 [Endorsed:] 233. United States circuit court for the southern district of New York. In the matter of the application of Boyd, Sutton & Co. for a review of the decision of the general appraisers as to the rates, &c., of duties on certain cotton laces & silk laces imported by them, per S. S. La Gascogne, Oct. 13, '90. E. = 167,661. Bond for costs on application for review. Chas. Curie, attorney for petitioner-, 44 & 46 Exchange Place, New York city. U. S. circuit court. Filed Feb. 14, 1891. John A. Shields, clerk.

6 At a stated term of the United States circuit court for the southern district of New York, held at the United States court and post-office building, in the city of New York, on the 14th day of Feb'y, 1891.

Present: Hon. E. Henry Lacombe, circuit judge.

In the Matter of the Application of BOYD, SUTTON & Co. for a Review of the Decision of the General Appraisers as to the Rates, &c., of Duties on Certain Cotton Laces & Silk Laces Imported by them, per S. S. La Gascogne, Oct. 13, '90. E. = 167,661.

Upon reading and filing the annexed petition of Boyd, Sutton & Co., importers of the merchandise therein described, and on motion of Charles Curie, attorney for said petitioners, it is ordered that the board of appraisers at the port of New York return to this court the record and the evidence taken by them in each of the above-entitled matters, together with a certified statement of the facts involved in the case and their decisions thereon.

E. HENRY LACOMBE.

7 *Notice of Appearance.*

U. S. Circuit Court, Southern District of New York.

In the Matter of the Application of BOYD, SUTTON & Co. as to Certain Importations, per S. S. La Gascogne, Oct. 13, 1890. Suit No. 233.

SIR: Take notice that I hereby appear, by direction of the Secretary of the Treasury of October 1st, 1890, on behalf of the collector of customs of the port of New York in the above-entitled suit.

Yours, &c., EDWARD MITCHELL,
U. S. Attorney.

Dated New York, Feb. 17, 1891.

To Chas. Curie, Esq., attorney for petitioners.

Endorsed: No. 233. U. S. circuit court, southern district of New York. In the matter of the application of Boyd, Sutton & Co. as to importations, per S. S. La Gascogne, Oct. 13, 1890. Notice of appearance, Edward Mitchell, United States attorney, to Chas. Curie, Esq., attorney for petitioners. U. S. circuit court. Filed Feb. 17, 1891. John A. Shields, clerk.

8 *Return of the Board of General Appraisers, February 17th, 1891.*

United States Circuit Court for the Southern District of New York.

In the Matter of the Application of Boyd, Sutton & Co. for a Review of the Decision of the General Appraisers as to the Rates, &c., of Duties on Certain Cotton Laces & Silk Laces Imported by them, per S. S. "La Gascogne," October 13, 1890. Entry No. 167,661. Case No. 233.

The board of general appraisers, in compliance with the order of the court in the above case, make the following return of the record and evidence taken by them in the above-entitled matter, together with a certified statement of the facts involved in the case and their decision thereon:

1. They state that on the 2nd day of January, 1891, a letter dated December 30, 1890, a copy of which is hereto annexed and marked "Exhibit A," was received from the collector of customs at New York, transmitting, among others, the protest, No. 4050 A, 17842, of Boyd, Sutton & Co. against his decision, liquidation, and assessment of duties on certain cotton laces and silk laces imported, per "La Gascogne," October 13, 1890, entry No. 167,661; said protest is hereto annexed and marked "Exhibit B."

2. That on the 15th day of January, 1891, said protest was duly considered and determined by the board of general appraisers, consisting of George H. Sharpe, Henderson M. Somerville,
9 and Charles H. Ham; that a decision which was rendered thereon, a copy of which is hereto annexed and marked "Exhibit C."

3. That no evidence was taken by the board in the consideration of said case, and for a certified statement of the facts involved in this case and their decision thereon the board state as follows:

First. They find that the so-called cotton laces referred to in the protest were, in fact, cotton laces—made of cotton.

Second. That the so-called silk laces referred to in the protest were, in fact, silk laces—made of silk.

Third. That duty was assessed upon the cotton laces and silk laces at the rates provided for such articles under the act of October 1, 1890.

Fourth. That as to the allegations of the protest that the act of March 3, 1883, is still in force, and that the act approved October 1, 1890, has not become a law and is unconstitutional and void, they find, as more particularly stated in their decision of December 15, 1890, in the case of Marshall Field & Co., published in the decisions of this board, promulgated by the Treasury Department under G. A. 203, that the act of October 1, 1890, is constitutional and legal, and that the act of March 3, 1883, so far as it affected the assessment of duty on these particular articles, is not in force and is repealed, and that the facts as to the enactment by Congress of the law entitled "An act to reduce the revenue and equalize duties on imports, and

for other purposes, approved October 1, 1890," commonly
10 known as the new tariff law, are fully stated in said decision of December 15, 1890, above referred to, a copy of which is hereto annexed and marked "Exhibit D."

GEO. H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. General Appraisers.

11 H. E. E. EXHIBIT "A." J. J.

CUSTOM-HOUSE, NEW YORK CITY,
COLLECTOR'S OFFICE, *Dec. 30th*, 1890.

Hon. board of U. S. gen'l appraisers, New York.

GENTLEMEN: In pursuance of the requirements of sec. 14, act of June 10, 1890, I transmit herewith the protests of the parties named in the annexed schedule from the assessment of duty as made by this office on certain merchandise imported by them in the vessels named, claiming that the act of October 1, 1890, is unconstitutional and that duty should be assessed under the act of March 3rd, 1883.

I have to state that the importing vessels all arrived in this port and the merchandise was entered subsequent to Oct. 6, '90, and that duty was accordingly assessed upon the merchandise under the provisions of the tariff act of Oct. 1, '90, and in accordance with the first section of said act.

The entries and invoices covered by said protests are enclosed herewith.

The naval officer concurs in the decision of this office.

Very respectfully,
J. J. COUCH,
Special Deputy Collector.

A true copy.
Attest: J. R. LAKE,
Chief Clerk.

(201 inclosures.)

12 O'Neil & Quackenbush, = 17224.
Boyd, Sutton & Co. and others, 17842, 4050 A.

A true copy.
Attest:
J. R. LAKE,
Chief Clerk.

13 EXHIBIT "B."

NEW YORK, *Dec.* 12, 1890.

Hon. Joel B. Erhardt, collector of customs, New York.

SIR: We hereby protest against your decision, liquidation, and assessment of duties as made by you on our importations below mentioned, consisting of cotton laces and silk laces contained in cases or packages, marked and numbered as described in the entries

of said importations, reference to which is hereby had for more certainty of description and particularity, claiming the cotton laces dutiable at 40 % ad val. under Sch. "I," act M'ch 3rd, 1883, and the silk laces dutiable at 50 % ad val, under Sch. "L" of said act.

We further protest against the exaction of duty on any of the goods covered by said entries at a higher rate than is provided for them respectively in the act of March 3, 1883.

We claim that the said act of March 3, 1883, is still in force and unrepealed for the following reasons, to wit:

First. Because the so-called act, approved October 1st, 1890, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," has not become a law, it never having been legally enacted as required by the provisions of article 1, section 7, of the Constitution of the United States.

14 Second. Because the so-called act, approved October 1st, 1890, was never passed by the House of Representatives and the Senate.

Third. Because the bill which was actually passed by the House of Representatives and the Senate, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," was never presented to the President for his approval, as required by the terms of article 1, section 7, of the Constitution of the United States.

Fourth. Because said bill, as passed by the House of Representatives and the Senate, contained a certain section providing for a rebate of internal taxes on manufactured tobacco and snuff which was not contained in the engrossed copy of said bill presented to the President and approved by him.

Fifth. Because the first five paragraphs of Schedule E, section 1, of said so-called act, providing for bounties to producers of American sugar (paragraphs 231 to 235), are unconstitutional and void, no power to enact legislation of this character having been vested in Congress by the Constitution.

Sixth. Because section 3 of said so-called act is unconstitutional and void, in that it delegates to the President the power of laying taxes and duties, which power, by sections 1 and 8 of article 1 of the Constitution, is vested in Congress.

Vessel, La Gascogne; from Havre; date of entry, 1890, Oct. 13; entry No. 167,661; if wareh'se, W. H. bond, c.; date of liquidation, 1890, Dec. 2; marks & numbers of packages, B., S. & Co., 407,

15 408, and others as per invoices and entries.

BOYD, SUTTON & CO.,
By CHAS. CURIE,
Attorney, 44 & 46 *Exchange Place, N. Y.*

Endorsed: 17842, 4050*a*. Boyd, Sutton & Co. Gascogne. Cen. Custom-house, New York. Dec. 12, 1890. Received. 2556 Pv. Vessel, c. Gascogne. Entry, 1890, Oct. 13. Liq-ed., 1890, Dec. 2. Protested, 1890, Dec. 12.

16 J. R. L. (Form 21.) H. M. S.

Affirmance of Collector's Decision.

"EXHIBIT C."

Classification.
In replying refer to
3609, &c.

OFFICE OF THE BOARD OF U. S. GENERAL APPRAISERS,
534 CANAL STREET, NEW YORK, *Jan'y.* 15, 1891.

Collector of customs, New York, N. Y.

SIR: Your decision as to the rate and amount of duties chargeable on certain merchandise imported in the vessels named and assessed with duty under the acts of May 9, June 10, Oct. 1, 1890, being in accordance with the decisions of the board of United States general appraisers dated Oct. 13, 22, Dec. 15, 1890, Nos. 57, 71, 203, is hereby affirmed on the protests described in the accompanying schedule and which were received with your letters of various dates. The invoices and entries received with your letter are herewith returned.

Respectfully yours,

GEORGE H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. General Appraisers.

417 enclosures & schedule. 11 sheets.

A true copy.

Attest: J. R. LAKE, *Chief Clerk.*

17

No.	Name of importer.	Vessel.	Date of entry.
3609 A, 17047.	Altman, Sims & Wear Co.	"Werra."	Oct. 13, 1890.
4050 A, 17842.	Boyd, Sutton & Co. and others.	"La Gascogne."	" 13, "

A true copy.

Attest: J. R. LAKE, *Chief Clerk.*

18 J. R. L. Ex. "D."

2051 B. OFFICE OF THE BOARD OF U. S. GENERAL APPRAISERS, 334 CANAL STREET, NEW YORK, *December* 15, 1890.

Before the board of United States general appraisers, at New York, December 14, 1890.

In the Matter of the Protest, 2051*b*, of MARSHALL FIELD & Co. against the Decision of the Collector at the Port of Chicago, Assessing Certain Rates of Duty on Imported Merchandise.

Opinion by Somerville, General Appraiser.

The question raised in this case is one of great importance, and we are fully aware of the fact that its decision is pregnant with results of the gravest character. The appellants in their protest assail as unconstitutional the act of Congress entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, commonly known as the McKinley tariff act. It is insisted that this act is void and of no effect, and for this reason that the duties assessed on certain imported merchandise under its provisions were illegally assessed; that the tariff act of March 3, 1883, still remains in full force, and that the rates of duty imposed by it continue unrepealed.

The first ground upon which this contention is based is that an important and material part of the measure as enacted by
19 Congress was omitted or clerically expunged in the engrossed law as signed by the President. The law as passed, therefore, it is said, was never approved, and the law as approved was never passed, and this variance, it is urged, vitiates not only the omitted section but the entire law.

The proceedings of Congress, of which we are required to take judicial notice, bear out the fact that the bill which passed both the House of Representatives and the Senate contained the following clause as part of section 30: * * *

SEC. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5. It shall be the duty of the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is

hereby appropriated any money in the Treasury not otherwise appropriated.

20 The Senate opposed this clause of the law and receded from their opposition only after a conference was ordered.

In engrossing the bill the clause in question was omitted apparently by clerical error, and the President signed the engrossed bill in its defective condition.

In deciding upon the legal validity of statutes assailed for unconstitutionality courts always approach the consideration of the subject with great caution. It is a settled maxim that every law will, in the first instance, be presumed to be unconstitutional until the contrary is made to clearly appear. All reasonable doubts must be resolved in favor of the validity of the given law. In other words, to be in doubt is to maintain the law. (Cooley on Const. Lim., 6th ed., 216.)

It may be conceded that a bill can become a law only when it has gone through all the forms made necessary by the Constitution of the United States to give it validity and force as such. It must be passed by both houses of Congress and approved by the President or, in the absence of such approval, pass through other forms prescribed by the Constitution. * * *

In some adjudged cases the rule is broadly stated to be that if a bill which is passed by the General Assembly of a State varies materially in substance and legal effect from that which is approved by the Governor, then there exists such a want of legal and actual identity between the bill passed and the one approved as

21 that neither of them acquires the force of a valid and constitutional enactment. (Jones *vs.* Hutchinson, 43 Ala., 721; Moody *vs.* The State, 48 Ala., 115.)

In the case of Moog *vs.* Randolph, 77 Ala., 577, the supreme court of Alabama, following this principle, adjudged a revenue law to be void which had been passed by both branches of the Legislature because the enrolled bill as approved by the Governor, by clerical omission, failed to contain a very important and material clause, as to which there had been a controversy between the two houses, resulting in an agreement after conference. Two of the judges concurred in the opinion, but Mr. Justice Stone doubted the correctness of the conclusion that the entire law was vitiated by the conclusion, holding, however, that the defect rendered void the omitted clause.

The same question, in effect, again arose before the same court in the later case of Stein *vs.* Leeper, 78 Ala., 517. There a bill had been passed by both houses of the Alabama Legislature prohibiting the sale of spirituous liquors in a large number of specified localities.

In enrolling the bill one of these localities was omitted from the title through clerical mistake. This omission operated legally to produce the same effect as if it had occurred in the body of the bill, in view of the constitutional requirement that "each law shall contain but one subject, which shall be clearly expressed in its title."

22 This imperfect bill was approved by the Governor. The court held that the omission vitiated the law only partially and not in toto; that it operated to expunge the particular locality omitted, but that the residue of the law was valid and would be given full force and operation in execution of what appeared to be the concurrence of the legislative and executive intention and to the extent of such concurrence. The court was of opinion that the provisions relating to the different localities were not so connected with or dependant on each other, but that the law could be executed in substantial conformity with the legislative intention by giving it validity so far as approved. "After expunging the unconstitutional portions," it was said, "the remaining parts are complete in themselves and capable of being executed in accordance with the legislative intent. As to the remaining parts of the statute there was a concurrence of both houses of the General Assembly and of the executive." This was clearly intended as a modification of the doctrine announced in the case of Moog *vs.* Randolph, *supra*.

This doctrine seems to be in accord with the settled rule adopted by the courts in passing on laws which are in part constitutional and in part unconstitutional. Legislative enactments are not necessarily adjudged void by reason of embracing or being associated in the same act with other parts which are unconstitutional. The test is thus formulated by Judge Cooley: "If when the unconstitu-

23 tional part is stricken out that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained." (Cooley's Const. Lim., 6th ed., 210, 211.) It is only when the two parts are "so mutually connected with and dependent on each other as conditions, considerations, or compensations for each other as to warrant a belief that the Legislature intended them as a whole, and that if all could not be carried into effect the Legislature would not pass the residue independently, and some parts are unconstitutional," that all the provisions must fall together. (Allen *vs.* Louisiana, 103 U. S., 80.) It was on this principle that the Supreme Court of the United States, in Tiernan *vs.* Rinker, 102 U. S., 123, held that a State law forbidding the sale of spirituous might be void as to all imported liquors and valid as to all others. Numbers of other analogous cases could be cited, but a further elaboration of the subject in this opinion is not deemed necessary.

The portion of the enactment under consideration which has been omitted from the law approved by the President was but a single section. It related to a separate and severable subject—that of rebates on tobacco. It constitutes but one of fifty-five sections of the entire act. In this law there are fourteen voluminous schedules of subjects and seven hundred and sixty-one separate paragraphs, including the free list of two hundred and eighty-nine paragraphs.

The number of articles embraced are innumerable and

24 beyond arithmetical computation.

The question is, shall the whole law fail as unconstitutional

and void because of a clerical omission of the one section relating to the one article of tobacco?

The inquiry is not entirely free from doubt. There are forcible reasons to be urged on both sides of the contention. But, as we have said, under a well-settled canon of construction, to be in doubt is to sustain the law. We are not sufficiently clear in the conviction that the clerical omission of this section from the approved bill, under the rules of construction which are to guide us, should vitiate the entire law. The more conservative view is to hold that it renders invalid the omitted section only, and we accordingly so decide.

There is another ground of objection to the law which we need notice but briefly. It is contended that section 3 of the law is also unconstitutional because it invests in the President of the United States the power to suspend laws and impose duties within his discretion. We construe the objection to be that the chief executive is vested with legislative power, contrary to the provisions of article 1, section 1, of the Federal Constitution, which provides that "all legislative powers shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

Section 3 has reference to securing reciprocal trade with foreign countries which produce and export sugars, molasses, coffee, tea, and other named articles, which are admitted free of duty into the United States.

It is provided that so often as the President shall be satisfied that any such foreign government "imposes duties or other exactions upon the agricultural or other products of the United States" which he may "deem to be reciprocally unequal and unreasonable," in view of the free entry of the articles above named, he "shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act" relating to the free introduction of said articles "for such time as he may deem just," and in such case and during such suspension "certain specified duties shall be levied, collected, and paid" upon such articles of sugar, molasses, coffee, etc., the product of or exported from such foreign countries.

The authority vested in the executive is the power to suspend the operation of one law with a legislative declaration that another law fixed in its terms shall thereupon go immediately into effect. It has been the practice from the foundation of the Government to confer on the President of the United States the power to suspend laws or by proclamation to put other laws in operation on certain contingencies to be determined by him. This is not deemed a vesting of legislative power in such officer. It is the familiar case of making a law, certain and fixed in its terms, operative on a named contingency, the existence of which is to be determined by the President. The statute books, Federal and State, *and* filled with laws of this character, and their validity has generally been sustained, unless prohibited by the particular constitution of the State where they were enacted.

Moreover, the invalidity of section 3 would not make the entire tariff act fall under the rule announced in the first part of this

opinion. This section might be stricken out and effect could still be given to the remainder of the law so as to substantially effectuate the general scope of the legislative intent.

The decision of the collector is affirmed.

The invoice received with this protest is herewith returned.

GEO. H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. Gen'l Appraisers.

Collector of customs, Chicago, Ill.

(1 enclosure.)

A true copy.
Attest:

J. R. LAKE,
Chief Clerk.

Endorsed: Suit No. 233. U. S. circuit court, southern dist. of New York. In the matter of the appeal of Boyd, Sutton & Co. from the decision of the board of U. S. gen'l appraisers. Return of the board. U. S. circuit court. Filed Feb. 18, 1891. John A. Shields, clerk.

27 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States circuit court rooms, in the post-office building, in the city of New York, on the 25th day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Hon. E. Henry Lacombe, circuit judge.

Suit No. 233.

In the Matter of the Appeal of ROBERT M. BOYD, HENRY K. SUTTON, and CHARLES A. BROWN, Trading under the Firm Name of Boyd, Sutton & Co., from the Decision of the Board of U. S. General Appraisers.

The above cause coming on for hearing and determination before this court on the application of Boyd, Sutton & Co., importers, for a review of the questions of law and fact involved in the decisions of the board of U. S. general appraisers herein, and on the return of the board of general appraisers of the record and the evidence taken by them, with their certified statement of the facts involved therein, together with their decisions thereon, now, after hearing Henry C. Platt, assistant U. S. attorney, on behalf of the collector, for affirmance, and W. Wickham Smith, counsel for Boyd, Sutton & Co., importers, for reversal, on motion of Edward Mitchell, U. S. attorney—

It is ordered, adjudged, and decreed that there was no
28 error in said proceedings before said board of general appraisers, and that their decisions herein be, and the same are hereby, in all things affirmed, with one & $\frac{65}{100}$ dollars costs and disbursements.

E. HENRY LACOMBE.

Endorsed: No. 233. U. S. circuit court, southern district of New York. In the matter of the appeal of Robert M. Boyd & o'rs, trading under the name of Boyd, Sutton & Co., from decision of board of U. S. gen. appraisers. Decree of affirmance. Edward Mitchell, United States attorney. U. S. circuit court. Filed Feb. 25, 1891. John A. Shields, clerk.

29 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

In the Matter of the Appeal of BOYD, SUTTON & Co. from a Decision of the Board of General Appraisers.

Know all men by these presents that we, William A. Osborne and Robert D. Kirk, of the city of New York, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars, to be paid to the said United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-sixth day of February, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas the above-named Boyd, Sutton & Co. have prosecuted an appeal to the Supreme Court of the United States to reverse the decision rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Boyd, Sutton & Co. shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. A. OSBORNE, [SEAL.]
17, 19 *William St.*
R. D. KIRK, [SEAL.]
17, 19 *William St.*

Sealed and delivered and taken and acknowledged this 26th day of February, 1891, before me—

WILLIAM H. NORTHUP,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate on file in New York county.

30 [Endorsed:] U. S. circuit court, southern district of New York. In the matter of the appeal of Boyd, Sutton & Co. from a decision of the board of general appraisers. Bond for damages and costs on appeal. Charles Curie, att'y for appellant, 44 Exchange Pl., N. Y. city. Approved: E. Henry Lacombe. U. S. circuit court. Filed Feb. 27, 1891. John A. Shields, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

William A. Osborne and Robert D. Kirk, being severally duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

W. A. OSBORN.
R. D. KIRK.

Sworn to this 26th day of February, A. D. 1891, before me—
WILLIAM H. NORTHUP,
[SEAL.] *Notary Public, Kings Co., N. Y.*

Certificate on file in New York county.

31 United States Circuit Court, Southern District of New York.

In the Matter of the Appeal of ROBERT M. BOYD, HENRY K. SUTTON, and CHARLES A. BROWN, Trading under the Firm Name of Boyd, Sutton & Co., from the Decision of the Board of General Appraisers.

The above-named petitioners, Robert M. Boyd, Henry K. Sutton, and Charles A. Brown, conceiving themselves aggrieved by the decision entered on February 25th, 1891, in the above-entitled proceeding affirming the decision of the board of general appraisers, do hereby appeal from said decision to the Supreme Court of the United States, and they pray that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decision was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated New York, February 26th, 1891.

CHARLES CURIE,
Attorney for Petitioners and Appellants,
44 Exchange Place, N. Y. City.

32 United States Circuit Court, Southern District of New York.

In the Matter of the Appeal of ROBERT M. BOYD, HENRY K. SUTTON, and CHARLES A. BROWN, Trading under the Firm Name of Boyd, Sutton & Co., from the Decision of the Board of General Appraisers.

It is hereby certified that the questions involved in the case, described in the foregoing appeal, are, in the opinion of this court, of such importance as to require a review of the decision of this court by the Supreme Court of the United States, and the appeal from said decision to said Supreme Court of the United States is therefore hereby allowed.

Dated New York, February 26th, 1891.

E. HENRY LACOMBE.

33 [Endorsed:] United States circuit court, southern district of New York. In the matter of the appeal of Robert M. Boyd, Henry K. Sutton, and Charles A. Brown, trading under the firm name of Boyd, Sutton & Co., from the decision of the board of general appraisers. Notice of appeal and order allowing same. Chas. Curie, att'y for petitioners and appellants, 44 Exchange Place, N. Y. city. Due service of a copy of within notice of appeal and order allowing the same is hereby admitted. Feb'y 27, 1891. Edw'd Mitchell, U. S. attorney, attorney for collector. U. S. circuit court. Filed Feb. 27, 1891. John A. Shields, clerk.

34 UNITED STATES OF AMERICA, *ss:*

To the United States and to Joel B. Erhardt, collector of the port of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of March, 1891, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Boyd, Sutton & Co. are appellants, to show cause, if any there be, why the decision in the said appeal mentioned should not be reversed, modified, or corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, the 26th day of February, 1891.

E. HENRY LACOMBE,
Circuit Judge.

Due service of a copy of within citation is hereby admitted. Feb'y 27, 1891.

EDW'D MITCHELL,
U. S. Attorney, Attorney for Collector.

35 [Endorsed:] United States circuit court. In the matter of the appeal of Boyd, Sutton & Co. from a decision of the board of general appraisers. Citation. Chas. Curie, att'y for petitioners, 44 Exchange Place, N. Y. city. U. S. circuit court. Filed Feb. 27, 1891. John A. Shields, clerk.

36 UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 35, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the matter of the application of Boyd, Sutton & Co. for a review of the decision of the general appraisers as to the rates, &c., of duties on certain cotton laces & silk laces imported, per S. S. La Gascogne, October 13th, 1890, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the said United States the one hundred and fifteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 1642. Robert M. Boyd, Henry K. Sutton, and Charles A. Brown, comprising the firm of Boyd, Sutton & Co., appellants, *vs.* The United States and Joel B. Erhardt, collector of the port of New York. Filed February 28, 1891.

Office Supreme Court U. S.
FILED.
OCT 10 1891
McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1049.

ROBERT M. BOYD, HENRY K. SUTTON AND CHARLES A. BROWN, COMPOSING THE FIRM OF BOYD, SUTTON & CO.,

Appellants,

vs.

THE UNITED STATES AND JOEL B. ERHARDT, COLLECTOR OF THE PORT OF NEW YORK.

BRIEF FOR APPELLANTS.

CHARLES CURIE,

Attorney for Appellants.

W. WICKHAM SMITH,

Of Counsel.

C. G. BURGOYNE, WALKER AND CENTRE STS., NEW YORK.

Supreme Court of the United States.

ROBERT M. BOYD, HENRY K. SUTTON and CHARLES A. BROWN, composing the firm of Boyd, Sutton & Co.,
Appellants,

vs.

THE UNITED STATES and JOEL B. ERHARDT, Collector of the Port of New York,
Respondent.

October Term, 1891.
No. 1049.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The appellants are importers of laces and white goods in the City of New York. On October 13th, 1890, they made entry at the Port of New York of an importation of cotton laces and silk laces per S.S. "La Gascogne" from Havre (fol. 1). On December 2d, 1890, the Collector of the Port liquidated the duties upon the merchandise by assessing upon both the silk laces and the cotton laces a duty of 60% *ad valorem* (fols. 11, 15). In assessing this duty he followed the provisions of the Tariff Act of October 1st, 1890 (so-called) paragraphs 373 and 413 (fol. 11). On December 12th, 1890, the appellants filed with the Col-

lector a protest against his exaction (fols. 13–15), in which they alleged that on the various grounds therein specifically stated the so-called Act of October 1st, 1890, entitled "An Act to reduce the revenue and equalize duties on imports, and for other purposes," was not a valid and constitutional enactment, but was wholly nugatory and void, and that, therefore, the laces were dutiable under the provisions of the Tariff Act of March 3d, 1883, the cotton laces at 40% *ad valorem*, under schedule "I" of said act, and the silk laces at 50% *ad valorem* under schedule "L" thereof. On December 30th, 1890, this protest was transmitted by the Collector to the Board of General Appraisers as required by law (fol. 11). On January 15th, 1891, the Board of Appraisers affirmed the decision of the Collector (fols. 16, 17). On February 12th, 1891, appellants filed a petition in the Circuit Court of the United States for the Southern District of New York, setting forth the errors of law in said decision of the Board of General Appraisers and praying for a review thereof (fols. 1–3). Thereupon, on the same day, the said Circuit Court ordered the Board of Appraisers to return the record in said case with a certified statement of the facts involved in the case and their decision thereon (fol. 6). On February 17th, 1891, the Board of Appraisers filed their return in compliance with said order (fols. 8, 9). On the 25th of February, 1891, the Circuit Court, after hearing argument, affirmed the decision of the Board of General Appraisers (fols. 27, 28). On the 26th of February, 1891, the appellants appealed from said decision and said Circuit Court certified that the questions involved were of sufficient importance to require a review by this Court and allowed the appeal (fols. 31, 32). All statutory requirements to entitle appellants to maintain this proceeding and appeal have been complied with.

The sole question involved in this case is the con-

stitutionality of the so-called Tariff Act of October 1st, 1890. Appellants contend that this legislation is null and void for the following reasons:

1st. It was never enacted in the mode prescribed by Article 1, Section 7, of the Constitution of the United States.

2d. It assumes (Schedule E, paragraphs 231–235) to provide for bounties to producers of American sugar, a power which is not among those conferred on Congress by the Constitution.

3d. It assumes in Section 3 to confer upon the President of the United States the power of imposing taxes on imports, a power which can be exercised by Congress only, under Sections 1 and 8, Article 1, of the Constitution.

These questions are fully raised in appellants' protest (fols. 13, 14).

The error assigned is that the Board of General Appraisers held (fols. 9, 10), that the Act of October 1st, 1890, is constitutional and legal, and that the Act of March 3d, 1883, so far as it affected the assessment of duty on these particular articles, is not in force and is repealed.

The consideration of the questions involved in this case arranges itself naturally under five points, viz.:

1st. Does the omission from the engrossed bill signed by the President of a section which formed part of the bill as it passed both houses of Congress, render the so-called Tariff Act unconstitutional?

2d. Are the sugar-bounty provisions unconstitutional?

3d. If the sugar-bounty provisions are unconstitutional, is the whole Act thereby invalidated, or may the remainder of the Act stand as law?

4th. Is the so-called "reciprocity section" (Section 3) unconstitutional?

5th. If Section 3 is unconstitutional, is the whole act thereby invalidated?

POINT I.

The so-called Tariff Act of October 1st, 1890, was never constitutionally enacted, because the bill signed by the President was not the same bill which had passed both Houses of Congress.

The facts bearing on this question are thus found by the Board of General Appraisers (fols. 19, 20):

"The proceedings of Congress of which we are required to take judicial notice bear out the fact that the bill which passed both the House of Representatives and the Senate contained the following clause as part of Section 30:

"Section 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff held by manufacturers or dealers at the time the reduction herein provided for shall go into effect upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction; and such

rebate to manufacturers may be paid in stamps at the reduced rate ; and no claim shall be allowed or drawback paid for a less amount than five dollars. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section, there is hereby appropriated any money in the Treasury not otherwise appropriated.

The Senate opposed this clause of the law and receded from their opposition only after a conference was ordered.

In engrossing the bill the clause in question was omitted, apparently by clerical error, and the President signed the engrossed bill in its defective condition."

It is suggested on the part of the Government on this appeal, that to ascertain what was contained in a bill as it passed both Houses of Congress, recourse can be had only to the journals of each House, and that the journals do not show the fact that this section was omitted. To this suggestion there are three answers.

1st. The doctrine that the Courts cannot look beyond the Journals of the Houses of the Legislature when the validity of a law or the time or manner of its enactment is called in question, has received some sanction in the State Courts, as applied to acts of the State Legislatures, and has been recognized and followed by this Court as applied to *State laws* where the highest Court of the State in question has thus interpreted its Constitution. But as applied to Federal statutes this doctrine has been distinctly repudiated by this Court. In the case of Gardner vs. the Collector, 6 Wallace, 499, this Court (speaking through the late Mr. Justice MILLER),

after reviewing the cases on this subject, uses the following language:

"We are of opinion, therefore, on principle as well as authority, that whenever a question arises in a court of law *of the existence of a statute*, or of the time when a statute took effect, or *of the precise terms of a statute*, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question; always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule."

This decision has been approved and adopted by the Courts of several of the States.

See

State vs. Platt, 2 S. C., 150.
Berry vs. Baltimore R. R., 41 Md., 446.

2d. The Board of Appraisers have found the facts as to this omission, and their findings constitute a part of the record on which this case comes here for review. The records show no exception on the part of the government to these findings, and no objection has been heretofore taken by the government to these findings. It is submitted that it is too late now to take such an objection.

3d. It is not true that the "Journal" *properly read* does not show this omission. The "Journal" shows that on September 26, 1890, a Conference Committee of the two houses made a report, in which it was recommended, "That the Senate recede from its amendment numbered 449." This report was accompanied by the printed bill which showed by numbers what the Senate amendments were. This bill, of which printed copies were furnished members, and are doubtless now on file in the document rooms of both Houses and are

easily procurable, shows (p. 175) that Senate Amendment 449 consisted in striking out Section 30 of the bill as passed by the House. And in the printed bill accompanying the report, after this section is printed "Conference restores Section 30." Of course the bill itself, covering two hundred and thirteen pages of printed matter, was not spread at large upon the journal. It is not the practice in legislative bodies to do this. It would not be practicable. Fifty bills of two hundred pages each may be passed in each House of the Legislature in one day. If each of these were copied *verbatim* into the journal, it would take perhaps a month to write up each day's proceedings. Bills and reports referred to by number or other appropriate designation in the journal are a part of the journal. They are preserved on the files of the two houses.

The journal also shows that in each House of Congress the conference report was agreed to.

Assuming it to be established, then, that this section was in the bill which passed both houses, and and that it is not in the engrossed bill signed by the President, as appears by the so-called law itself as filed in the State Department, we have now to consider the effect of this omission.

The Constitution, Article 1, Section 7, provides:

"Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it."

This language is plain and unambiguous. It distinctly provides that to make a bill into a law two things must be done at least. First, it must pass both Houses of Congress. Second, it must be presented to

the President of the United States. After these two things have been done, a bill may become a law in three different ways, as set forth in the balance of the section, but these two steps are indispensable. And, of course, this does not mean that a bill may become a law if some other bill of like purport or substantially similar provisions is presented to the President. *The bill passed and the bill presented must be identical.*

In his work on Constitutional Limitations, Judge COOLEY in his chapter on the Enactment of Laws, says (p. 155): "Not only is it important that the will of the law makers be clearly expressed, but it is also essential that it be expressed in due form of law; since nothing becomes law simply and solely because men who possess the legislative power will that it shall be, unless they express their determination to that effect in the mode pointed out by the instrument which invests them with the power, and under all the forms which that instrument has rendered essential."

The same doctrine is forcibly expressed by the Supreme Court of the State of Illinois in the case of Ryan vs. Lynch, 68 Ill., 160. "Where a bill is not passed according to the Constituion, it is the same as if it were agreed to by an unauthorized assemblage of individuals."

The authorities on this subject are numerous. A few only need be cited as illustrations.

Opinion of Justices, 35 N. H., 579. This was an opinion rendered by the Justices of the Supreme Court of New Hampshire, in accordance with a provision of the Constitution of that State empowering the Governor and other officers to request such opinions in certain cases. A bill had passed the House of Representatives and been sent to the Senate, where it was amended. The bill was then returned to the House without notice that an amendment had been incorporated in it. No further action was, therefore, taken upon it by the House, but it was engrossed and signed

by the Governor with the amendment in it. The judges unimously held that the bill had never become a law, and in their opinion made use of the following language :

"It appears to us, from an inspection of the act and journals of the two Houses of the Legislature that the bill as it was amended in the Senate, as it stands in the engrossed act and the published laws, did not receive the assent of the House of Representatives as is required by the Constitution, and that the bill as it was passed by the the House of Representatives did not receive the assent of the Senate, and that consequently neither the whole act nor any part of it, was passed with the concurrence of both Houses of the Legislature, as is required by the Constitution."

In People vs. De Wolfe, 62 Ill., 253, a bill had passed the Lower House of the Legislature. An amendment was made by the Senate which the House refused to accept. The Senate then by vote receded from its amendment, but on this vote there was not a constitutional majority, and no vote was then taken for the final passage of the bill. The Court held that the bill had not become a law, saying : "The Senate had passed the bill only as amended. It does not follow that the bill stripped of the amendment did receive or would have received the assent of the constitutional majority. The bill which passed the House and the bill as amended were something different. The question is, to what did a constitutional majority of the Senate give their consent ?"

In Brady vs. West, 50 Miss., 68, the enrolled copy of a bill signed by the Governor was found to contain erasures and interlineations which showed that it was not the bill which passed the Legislature. The Court held the bill void.

In Meracle vs. Down, 64 Wis., 323, an act was held invalid because the records showed it had never been passed, although it was printed in the statute books.

The Court say: "To hold that Chapter 314 is a valid law, merely because it has been printed as such in the statutes when it was never enacted, would be, in effect, *to vest the power of legislation in some dishonest or inaccurate clerk.*

In Weil vs. Kentfield, 54 Cal., 111, the Constitution of the State required that a bill should be read three times at length unless the first two readings were dispensed with by a two-thirds vote for reasons of urgency, and it was held that an enactment which did not comply with this constitutional provision was unconstitutional.

In Moog vs. Randolph, 77 Ala., 597, a revenue law had passed both Houses of the Legislature. As passed, it contained a clause which had been stricken out by way of amendment in one House and restored by a Conference Committee because the other House refused to pass the bill unless the section was restored. In engrossing the bill, this particular section was omitted and the Governor signed the defective bill. It was held that the entire law was unconstitutional.

In Berry vs. Baltimore R. R., 41 Md., 446, one section of a statute had been altered in engrossing. The whole statute was held unconstitutional and void.

Other authorities to the same effect are

People vs. Commissioners of Highways, 54 N. Y., 276.
Legg vs. Mayor of Annapolis, 42 Md., 203.
Ryan vs. Lynch, 68 Ill., 160.
Jones vs. Hutchison, 43 Ala., 721.
Moody vs. State, 48 Ala., 115.
Supervisors vs. Heenan, 2 Minn., 330.
State vs. Hagood, 13 S. C., 46.
County of San Mateo vs. R. R. Co., 13 Fed. Rep., 722.
Walnut vs. Wade, 103 U. S., 683.
Opinion of Justices, 52 N. H., 622.

It is sought to meet this weight of authority by the suggestion that the section omitted was an unimport-

ant one, not a vital and essential part of the bill, not an indispensable part of the scheme sought to be put in operation by the bill. We may quote from the decision of the Board of Appraisers (fol. 23). "The portion of the enactment under consideration which has been omitted from the law approved by the President was but a single section. It related to a separate and severable subject—that of rebates on tobacco. It constitutes but one of fifty-five sections of the entire act. In this law there are fourteen voluminous schedules of subjects, and seven hundred and sixty-one paragraphs, including the free list of two hundred and eighty-nine paragraphs. The number of articles embraced are innumerable and beyond arithmetical computation. The question is, shall the whole law fail as unconstitutional and void because of a clerical omission of the one section relating to the one article of tobacco."

The numerical argument here contained need hardly be considered. A bill might have seven hundred and sixty-nine thousand paragraphs, and the omission of one might alter the effect of the whole. The Board says the section related to a separate and *severable* subject. True, it was severable, but *Congress refused to sever it.* The bill, as it passed the House, contained a modification of both the customs and internal revenue taxes. The Senate struck out the internal revenue sections. The House refused to pass the bill unless they were restored; and, therefore, they were restored in conference and were in the bill as passed. This makes the case exactly parallel with the case of Moog vs. Randolph *(supra).* And of a scheme to reduce internal revenue taxes on tobacco a rebate provision was a vital and indispensable part, for the omission of it would leave every dealer who might have unsold goods on hand when the law took effect without a market for his wares. Such provisions have been, almost without

exception, made a part of all our revenue laws reducing duties.

Moreover, if the principle contended for is to be admitted who is to decide what part of a bill may be omitted—the executive, as he did in Brady vs. West, *supra*, or the inaccurate or dishonest engrossing clerk, as in Moog vs. Randolph and Meracle vs. Down,—or the Courts. Is a principle of constitutional law to be established which shall encourage carelessness and slovenliness in the enactment of laws and impose on the Courts the duty of determining in every such case how important the irregularity or omission is? This would be to impose on the Courts legislative functions.

We do not mean to contend that the omission of any part of an act by an engrossing clerk, however immaterial the omission, necessarily renders the act void. We mean to discriminate between clerical errors in spelling or punctuation or omissions of a word or a number of words which the Courts may supply under the recognized rules of construction, and omissions of material parts of the act itself which affect rights of property and the general scheme of the statute as a whole. The omission of a provision like the one that was omitted in the case now before the Court leaves upon the hands of the manufacturer and dealer a stock on which the taxes have already been paid, without the means of recovering them from the consumer, having the effect of confiscating property to the extent of the tax paid. This, we maintain, is a most important omission.

The cases referred to in the decision of the Board of Appraisers, as holding that parts of a statute may be upheld and enforced while other parts are declared unconstitutional, have no application here. When a statute has been enacted by all constitutional forms and according to all constitutional requirements, the Legislature having simply overstepped its powers in some severable clauses of the statutes, the Courts have

indeed upheld laws in part. But this principle and practice cannot be extended to cases where part of the law as passed by the Legislature has been omitted from the document approved by the Executive. If one part may be thus omitted another may, and thus the will of the legislative branch of the Government, the direct representatives elected by the people to make laws, may be nullified by an agreement of the Executive and Judicial branches.

To sustain such a view of the Constitution would put popular government in peril. Accidental omissions by engrossing clerks might soon be followed by corrupt omissions by engrossing clerks, carelessness give place to bribery, and with every law thus tainted no man could tell whether the so-called legislation would be upheld or rejected until the Courts had had an opportunity to say whether the omissions were important or unimportant. In the hurry and tumoil which attend the closing of a session of Congress what has happened in the case of the act now under consideration will soon become a common occurence, unless the decision in this case shall serve as a timely and solemn warning which shall bring about more careful and deliberate action. In the language of Judge COOLEY (Constitutional Limitations, p. 180), "The fact is this, that whatever constitutional provision can be looked on as directory merely is very likely to be treated by the Legislature as if it was devoid even of moral obligation, and to be, therefore, habitually disregarded. To say that a provision is directory seems with many persons to be equivalent to saying that it is not law at all. That this ought not to be so must be conceded; that it is so we have abundant reason and good authority for saying. If, therefore, a constitutional provision is to be enforced at all it must be treated as mandatory. And if the Legislature habitually disregard it, it seems to us that there is all the more urgent necessity that the Courts should enforce it. And it also

seems to us that there are few evils which can be inflicted by a strict adherence to the law so great as that which is done by the habitual disregard, by any department of the government, of a plain requirement of that instrument from which it derives its authority, and which ought therefore to be scrupulously observed and obeyed."

POINT II.

The sugar-bounty provisions of this so-called Tariff Act are unconstitutional.

These provisions are contained in Schedule "E," paragraphs 231–235 and 241. Substantially they provide that on and after July 1st, 1891, and until July 1st, 1905, there shall be paid out of the United States Treasury to every producer of sugar, testing not less than 90° by the polariscope from beets, sorghum or sugar cane, grown within the United States, or from maple sap produced within the United States, a bounty of two cents per pound, and upon such sugar testing less than 90 but not less than 80 degrees by the polariscope, a bounty of one and three-fourth cents per pound under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. The remaining provisions regulate the mode of applying for the bounty and the administration of this bounty system.

The objection to these provisions is two-fold:

1st. That Congress has no power under the Constitution to create or award such bounties.

2d. That taxes imposed upon the people for the pay-

ment of such bounties are not levied for public purposes.

In Chapter I. of his work on the Law of Taxation, Judge COOLEY thus defines taxes: "Taxes are the enforced proportional contribution from persons and property, levied by the State by virtue of its sovereignty, for the support of government *and for all public needs.*

Again on page 55 of the same work, the author says: "It is the first requisite of lawful taxation that the purpose for which it is laid shall be a *public purpose.* In any case in which the Legislature shall have clearly exceeded its authority in this regard, and levied a tax for a purpose not public, it is competent for anyone, *who in person or property is affected by the tax,* to appeal to the Courts for protection." Again (p. 103), "It is implied in all definitions of taxation, that taxes can be levied for *public purposes only.* Differences of opinion frequently arise concerning the power to impose taxation in particular cases, but all writers who treat the subject theoretically and all jurists agree in the fundamental requirement that *the purpose shall be public,* and they differ, when they differ at all, upon the question whether the particular purpose proposed is within the requirement. But it is also generally admitted that the legislative determination on this subject is not absolutely conclusive. It may be sufficiently so to put the administrative machinery of the State in motion; but when the exaction is made of an individual and the power of the State is made use of to compel submission, he has always the right to invoke the protection of the law. And an appeal to the law for the protection of individual property must necessarily render the question which lies at the foundation of the demand a judicial question, upon which the Courts cannot refuse to pass judgment. It has been forcibly and yet very truly said that an unlimited power in the Legislature to make anything and

everything lawful which it might see fit to call taxation, would, when plainly stated, be an unlimited power to plunder the citizen. In attempting to exercise the right in any particular case the Legislature merely asserts its jurisdiction to act ; but questions of jurisdiction are not usually concluded by a decision in its favor made by the party claiming it ; they necessarily remain open, and may be disputed anywhere. When, therefore, the question of the validity of taxation becomes judicial, if it shall appear that the exaction is made for a purpose not public, the right of the individual to protection is clear. Such an exaction is not within the competency of the legislative power, and the attempt to enforce it, however honestly made, could only be an attempt to take property from its citizens under an authority which the law of the land does not recognize."

Keeping these general principles in view, let us consider the provisions of the act under consideration to which objection is made. They provide that for a period of a quarter of a century public funds shall be paid out of the Treasury to private individuals as a reward for carrying on a particular business. Two objects only can be aimed at in legislation of this character.

1st. To compensate those now engaged in the production of sugar for the injury their business will sustain from a partial repeal of the duties on sugar.

2d. To aid and encourage persons now engaged in other pursuits to enter upon the business of producing sugar.

The first of these objects, which we all know as matter of public history was the main purpose of this legislation is, clearly not a public purpose ; it is something which we believe has never been attempted in this country before. If adopted as a precedent in tax legislation the mischief it would work is incalculable. It

seems to be based on the assumption that a man who has built up a business protected by an existing system of taxation has acquired a vested right to have that system continued forever or be reimbursed by the Government for any losses he may incur by reason of a change in the system. Where is this to end? If Congress has a right to give public money to sugar planters ers because it has put sugar on the free list, why should it not give public money to those engaged in every other branch of business who have had their goods placed on the free list. There is and has been for many years a growing demand on the part of manufacturers and consumers that wool shall be placed on the free list. If this should be done and this kind of legislation is to receive judicial sanction, then clearly the sheep-raisers of the country, who are far more numerous and widely distributed than the sugar planters, will be entitled to a bounty and in all probability they will get it.

And if this principle is to be applied logically why should it be restricted to goods which have been made free.

Why should not every manufacturer of a class of goods on which duties have been lowered have a bounty to reimburse him for the reduction in profits which increased competition of foreign prod--ucts will cause him. In short, why should not any and every man who can show that he made more money under an old tariff than under a new be paid the difference out of the Treasury. Ten years ago this might have seemed an exaggerated argument; but, in view of the agrarian legislation of the present time and the wild schemes which are gaining popular support, it is not too highly colored a picture of what may await us if the Courts do not call a halt. Surely taxation for such a purpose as this is not taxation for a public purpose.

The other purpose for which this kind of legislation may be designed is to encourage the development of

sugar production in this country. This is the purpose which the advocates of bounty legislation have (whether sincerely or not is not a proper subject of discussion here) avowed to be their chief aim. And it is, we think erroneously, supposed to be much less obnoxious to constitutional objections than the other. The argument is that the introduction of a great industry like this is a public benefit, a benefit to the whole country, and, therefore, taxation in aid of it is taxation for a public purpose.

But a review of the authorities which we shall presently cite will show that an indirect public benefit of this character is not on authority, as we contend it is not on principle, a public purpose which may be accomplished by taxation. The interest of one is the concern of all and, in a certain sense, anything which makes one or more members of the community wiser, happier, more prosperous, more contented, more ambitious, more inventive, more industrious, more frugal, more advanced in any way in virtue and well-being, is a public benefit. But if public funds could be indiscriminately applied to any of these purposes on the theory that taxes were being levied for a public purpose, we might come ultimately to what is now popularly called nationalism, to the realization of the dreams of Mr. Edward Bellamy and his followers. And however advantageous such a system might be for a country, it will hardly be contended that it could be inaugurated under our present Constitution. Silk culture on a large scale might be a greater benefit to this country than sugar culture, and equally deserving of a bounty to encourage it, and such a bounty was originally incorporated in the Tariff Act under consideration by the House (see Conference Report). The manufacture of tin plate might likewise be encouraged by a bounty. And the same argument would justify a bounty for almost any business or industry not absolutely nefarious or prejudicial to public health or morals. The

public purposes for which taxes may be levied must be not those which may indirectly result in a public benefit, but such as are directly necessary or beneficial to the whole public, such as the maintenance of a military force, the preservation of the public health, the laying out of roads and highways, the post-office, &c. This distinction will be made more clear by a review of the authorities, to which we shall now proceed.

In Lowell vs. Boston, 111 Mass., 454, an act had been passed by the Legislature authorizing the City of Boston to issue bonds to the amount of twenty million dollars, the proceeds of which should be loaned to persons whose property had been destroyed by the great Boston fire. The Supreme Court of that State, in an elaborate opinion, held the act unconstitutional. We quote from the opinion:

"The power to levy taxes is founded on the right, duty and responsibility to maintain and admininister all the governmental functions of the State, and to provide for the public welfare. To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public service, or some object which concerns the public welfare. The promotion of the interest of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is in its essential character a private and not a public object. However certain and great the resulting good to the general public, it does not by reason of its comparative importance cease to be incidental. The incidental advantage to the public or to the State, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation or for which taxation may become necessary. It is the essential character of the direct object of the expenditure which must determine its

validity as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than upon force. An appropriation of money raised by taxation or of property taken by right of eminent domain by way of gift to an individual for his his own private uses exclusively, would clearly be an excess of legislative power. The distinction between this and its appropriation for the construction of a highway is marked and obvious. It is independent of all considerations of resulting advantage. The individual by reason of his capacity, enterprise or situation might be enabled to employ the money or property thus conferred upon him in such a manner as to furnish employment to great numbers of the community, to give a needed impulse to business of various kinds, and thus promote the general prosperity and welfare. In this view it might be shown to be for the public good to take from the unenterprising and thriftless their unemployed capital and entrust it to others who will use it to better advantage for the interests of the community. But it needs no argument to show that such an arbitrary exercise of power would be a violation of the constitutional rights of those from whom the money or property was taken, and an unjustifiable usurpation.

In the case of a highway, on the other hand, its direct purpose of public use determines conclusively the question in support of the exercise both of the right of eminent domain and of taxation, however trifling the advantage to the public compared with that to individuals. The extent or value of the public use, and the wisdom and propriety of the appropriation are matters to be determined exclusively by the Legislature, either directly or by its delegated authority. When the power exists it is not within the province of the Court

to interfere with its exercise by any inquiry into its expediency."

In C. B. U. P. R. R. Co. vs. Smith, 23 Kan., 745, an Act had been passed by the Legislature authorizing Blue Rapids township to take stock in and issue bonds to the Irving Manufacturing Company, a corporation then organized, whose purpose, as expressed in its charter, was to purchase all needed lands and construct and maintain a dam across the Big Blue River within two miles of Irving, and build and maintain mills and their machinery for manufacturing purposes. The act was held unconstitutional and void. The Court, speaking through Mr. Justice BREWER, said:

"Public aid to private purposes cannot be secured by yoking them to a public purpose. *And where the public and private purposes are attempted to be aided by a single concession the latter vitiate rather than the former uphold the grant. The entire purpose, or if there are several and no rule of apportionment as to the application of the proceeds, then all the purposes must be public.*"

In Opinions of Justices, 58 Me., 590, the House of Representatives inquired of the Justices of the Supreme Court: "Has the Legislature authority under the Constitution to pass laws enabling towns by gifts of money to assist individuals or corporations to establish or carry on manufacturing of various kinds within or without the limits of said towns?" The question was answered in the negative. The Court used the following language: "Individuals and corporations embark in manufactures for the purpose of personal and corporate gain. Their purposes and objects are precisely the same as those of the farmer, the mechanic or the day laborer. They engage in the selected branch of manufactures for the purpose and with the hope and expectation not of loss but of profit. The general benefit of the community resulting from every description of well directed labor is of the same character whatever may be the branch of industry upon

which it may be expended. All useful laborers, no matter what the field of labor, serve the State by increasing the aggregate of its products—its wealth. There is nothing of a public nature any more entitling the manufacturer to public gifts than the sailor, the mechanic, the lumberman, or the farmer. Our Government is based upon equality of rights. All honest employments are honorable. The State cannot rightfully discriminate among occupations, for *a discrimination in favor of one branch of industry is a discrimination adverse to all other branches.* The State is equally to protect all, giving no undue advantage or special or exclusive preference to any.

Taxation in aid of private enterprises is to load the tables of the few with bounty that the many may partake of the crumbs that fall therefrom."

In State v. Osawkee, 14 Kan. 418, an Act had been passed authorizing the issue of bonds for the purpose of providing the destitute citizens of certain townships with provisions, and with grain for seed and feed. The Act was called forth by a failure of the crops. It was held unconstitutional and void. The Court through Mr. Justice Brewer said: "The credit of the township is invoked to procure funds for the accommodation of a single class temporarily and through unexpected calamity embarrassed in the prosecution of its ordinary business. Can this be called a public purpose? Clearly not. It would doubtless relieve the temporary wants of that class, would enable it to enter upon the business of the year with increased hope and a reasonable expectation of ordinary success in that business, and thus indirectly result in great benefit to the general public. But a similar result would follow the success and prosperity of any other class in business, and if the principle be once recognized in its application to this class, who can tell how soon it may be invoked in aid of another. If one hundred farmers may receive seventy-five dollars each to

assist them in their farming, why may not one hundred mechanics with equal propriety receive seventy-five dollars each to assist them in their business, or a single manufacturer, who employs one hundred hands, receive seventy-five hundred dollars to assist him in his manufacturing? A difference in amount makes no difference in the principle.

In Weismer vs. Douglas, 64 N. Y., 91, the Legislature had passed an act authorizing the Village of Douglas to take stock in a manufacturing corporation and to issue bonds to raise the money to pay for such subscription, and to levy and collect taxes for the payment of the principal and interest on said bonds. The Act was held void. FOLGER, J., said: "It may also be conceded that that is a public purpose, from the attainment of which will flow some benefit or convenience to the public, whether of the whole Commonwealth or of a circumscribed community. In this latter case, however, the benefit or convenience must be direct and immediate from the purpose, and not collateral, remote or consequential. It must be a benefit or convenience which each citizen of the community affected may lay his own hand to in his own right."

In Attorney-General vs. Eau Claire, 37 Wis., 400, an act had been passed by the Legislature authorizing the Common Council of the City of Eau Claire to construct a dam across the Chippewa river, and lease the same for private purposes, and to issue bonds to pay for the same. The act was held unconstitutional. The Court said: "We cannot hesitate in holding what was not questioned at the bar, that if the statute under consideration grant power to the city to construct and maintain the dam for the purpose of leasing the water-power for manufacturing purposes, it is a power for a private and not a public use, and cannot be upheld."

In Whiting vs. Sheboygan, &c., R. R. Co., 25 Wis., 167, an act had been passed by the Legisture authorizing the County of Fond du Lac to levy a tax, the pro-

ceeds of which were to be donated to aid the building of a railroad from the City of Fond du Lac to the City of Ripon. The act was held void. The Court said, per DIXON, J: "Can a corporation composed of one or more individuals be created for the purpose of owning and operating a railroad and holding and enjoying all the gains and emoluments, and at the same time the charter provide that the corporators or stockholders shall pay nothing, but that the road shall be built, equipped and put in running order at the expense of the people to be defrayed by taxation. The majority of this Court are constrained to believe that the Legislature possesses no such powers and that all these questions must be answered in the negative. Such proceedings, provided they were proper or could be sustained, would deserve the opprobrious epithet given to them by Judge JAMES, in Sweet vs. Hulbert, 51 Barb., 316, where, speaking of an Act of the Legislature of New York precisely like that involved in these appeals, he says: "*If this can be done it is legal robbery: less respectable than highway robbery in this, that the perpetrator of the latter assumes the danger and infamy of the act, while this act has the shield of legislative irresponsibility.*"

In People vs. Township, 20 Mich., 452, an act had been passed by the Legislature of Michigan, authorizing townships in several counties to pledge their credit to aid in the construction of a railroad from the City of Detroit to the Village of Howell. This act was held void in a remarkably able opinion by Judge COOLEY. We quote that part of it distinguishing between a private and a public purpose:

"On the other hand certain things of absolute necessity to civilized society the State is precluded either by express constitutional provisions or by necessary implication from providing for at all, and they are left wholly to the fostering care of private enterprise and private liberality. We concede, for instance, that

religion is essential and that without it we should degenerate to barbarism and brutality, yet we prohibit the State from burdening the citizen with its support, and we content ourselves with recognizing and protecting its observance on similar grounds. Certain professions and occupations in life are also essential, but we have no authority to employ the public money to induce persons to enter them. The necessity may be pressing and to supply it may be in a certain sense to accomplish a public purpose, but it is not a purpose for which the power of taxation may be employed. The public necessity for an educated, skillful physician in some particular locality may be great and pressing, yet, if the people should be taxed to hire one to locate there, the common voice would exclaim that the public moneys were being devoted to a private purpose. The opening of a new street in a city or village may be of trifling importance as compared with the location within it of some new business or manufacture, but while the right to pay out the public funds for the one would be unquestionable, the other, by common consent, is classified as a private interest which the public can aid as individuals, if they see fit, while they are not permitted to employ the machinery of the government to that end. Indeed, the opening of a new street in the outskirts of a city is generally very much more a matter of private interest than of public concern; so much so that the owner of the land voluntarily throws it open to the public without compensation; yet, even in a case where the public authorities did not regard the street as of sufficient importance to induce their taking the necessary action to secure it, it would not be doubted that the moment they should consent to accept it as a gift, the street would at once become a public object and purpose upon which the public funds might be expended with no more restraints upon the action of the authorities in that par-

ticular, than if it were the most prominent and essential throughfare in the cty.

By common consent, also, a large portion of the most urgent needs of society are relegated exclusively to the law of demand and supply. It is this in its natural operation and without the interference of the Government that gives the proper proportion to tillers of the soil, artisans, manufacturers, merchants and professional men, and that determines when and where they shall give to society the benefit of their particular services. However great the need in the direction of any particular calling, the interference of the Government is not tolerated, because, though it might be supplying a public want, it is considered as invading the domain that belongs exclusively to private inclination and enterprise. We perceive, therefore, that the term "public purpose," as employed to denote the objects for which taxes may be levied, has no relation to the urgency of the public need, or to the extent of the public benefit which is to follow. It is, on the other hand, merely *a term of classification to distinguish the objects for which, according to settled usage, the government is to provide from those which, by the like usage, are left to private inclination, interest or liberality.*"

And on page 486, the Court says: "In the course of the argument of this case allusion was made to the power of the State to pay bounties. But it is not in the power of the State in my opinion under the name of a bounty or under any other cover or subterfuge to furnish the capital to set private parties up in any kind of business, or to subsidize their business after they have entered upon it. A bounty law of which this is the real nature is void whatever may be the pretense on which it may be enacted. The right to hold out pecuniary inducement to the faithful performance of public duty in dangerous or responsible positions stands upon a different footing altogether, nor have I any occasion to question the right to pay rewards for

the destruction of wild beasts and other public pests; a provision of this character being a mere police regulation. But the discrimination by the State between different classes of occupations and the favoring of one at the expense of the rest whether that one be farming or banking, merchandising or milling, printing or railroading is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in State Government. When the door is once opened to it there is no line at which we can stop and say with confidence, that thus far we may go with safety and propriety, and no further. Every honest employment is honorable; it is beneficial to the public; it deserves encouragement. The more successful we can make it the more does it generally subserve the public good. But it is not the business of the State to make discriminations in favor of one class against another, or in favor of one employment against another. The State can have no favorites. Its business is to protect the industry of all and to give all the benefit of equal laws. It cannot compel an unwilling minority to submit to taxation in order that it may put upon its feet any business that cannot stand alone. Moreover it is not a weak interest only that can give plausible reasons for public aid; when the State once enters upon the business of subsidies we shall not fail to discover that the strong and powerful interests are those most likely to control legislation, and that the weaker will be taxed to enhance the profits of the stronger."

The above are some of the decisions of the State Courts on this question. The Federal decisions are quite as emphatic.

In Commercial National Bank vs. Iola, 2 Dill, 353, an act had been passed by the Legislature of Iowa, authorising the City of Iola to appropriate fifty thousand dollars to aid in the erection of buildings at or near the City of Iola, to be used for the purpose of manufacturing bridges, plows and stoves, and for that

purpose to issue bonds and levy taxes to pay the principal and interest of the bonds. The act was held unconstitutional. The opinion of Circuit Judge DILLON says: "Taxation to aid ordinary manufactures or the establisment of private enterprises is a device until recently quite unheard of, and the power must be denied to exist unless all limits to the appropriation of private property and to the power to tax be disregarded. The question under discussion must be determined on some principle, and I hold it to be sound doctrine that the mere incidental benefits of the public or the State which result from the pursuit by individuals of ordinary branches of business or industry do not constitute a public use in a sense which justifies the exercise of either the power of eminent domain or of taxation.

If this salutary provision be abandoned, we unsettle the foundations of private property, and unwisely open the door for frauds and abuses of the most alarming character."

But perhaps the most weighty deliverance on this question is that of this Court in the case of Loan Association vs. Topeka, 20 Wall. 655. There the Legislature of Kansas had passed an act authorizing cities and counties to issue bonds for the purpose of building bridges, aiding railroads, water power or other works of internal improvement. The opinion is by the late Mr. Justice MILLER, and we trust we may be pardoned for quoting from it at length:

"The theory of our Governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these Governments are all of limited and defined powers. There are limitations on such powers which grow out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. Of

all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may lawfully be used, and the extent of its exercise is in its nature unlimited. It is true that express limitation on the amount of tax to be levied on the things to be taxed may be imposed by Constitution or statute, but in most instances for which taxes are levied, as the support of Government, the proseecution of war, the national defense—any limitation is unsafe. The entire resources of the people should in some instances be at the disposal of the Goverment. The power to tax is, therefore, the strongest, the most pervading of all the powers of Government, reaching directly or indirectly to all classes of the people. This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there is no implied limitation of the uses for which the power may be exercised. *To lay with one hand the power of the Government on the property of the citizen, and with the other to bestow it on favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation.* This is not legislation. It is a decree under legislative forms. But in the case before us in which the towns are authorized to contribute aid by way of taxation to any class of manufacturers, there is no difficulty in holding that this is not such a public purpose as we have been considering. If it be said that a benefit results to the local public of a town by establishing manufactures, the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner are equally the promoters of the public good and equally deserving the aid of the citizen by forced contributions. No line can be drawn in

favor of the manufacturer which would not open the coffers of the public treasury to the importunities of two-thirds of the business men of the city or town."

In Parkersburg vs. Brown, 106 U. S., 487, an act had been passed by the Legislature of West Virginia authorizing and empowering the authorities of the City of Parksburg to issue bonds for the purpose of lending the same to manufacturers carrying on business in or near said city.

This Court held the act void, saying, per Mr. Justice BLATCHFORD:

"But we are of the opinion that within the principles decided by this Court in the case of Loan Association vs. Topeka, 20 Wall., 655, the bonds in question here are void. The Act of 1868 authorizes the bonds to be issued as the bonds of the city. The principal and interest are to be paid by the city. The bonds are to be lent to persons engaged in manufacturing. Taxation to pay the bonds in question is taxation which takes the private property of one person for the private use of another person."

In Cole vs. La Grange, 113 U. S., 1, an act had been passed by the Legislature of Missouri authorizing the City of La Grange whenever two-thirds of the resident taxpayers signified their approval thereof at a special election to levy a tax not exceeding two per cent. per annum on the assessed valuation of the real and personal property in the city, to pay for a donation or subscription to the stock of a railroad or manufacturing company. This Court held the act void. The opinion written by Mr. Justice GRAY uses the following language:

"The general grant of legislative power in the Constitution of the State does not enable the Legislature, in the exercise either of the right of eminent domain or of the right of taxation, to take private property without the owner's consent for any but a public object. Nor can the Legislature authorize counties, cities or

towns to contract for private objects debts which must be paid by taxes. It cannot therefore authorize them to issue bonds to assist merchants or manufacturers, whether natural persons or corporations, in their private business. These limits of the legislative power are now too firmly established by judicial decisions to require extended argument upon the subject."

A further detailed review of the decisions is unnecessary, but the following additional authorities to the same effect may be cited:

Sharpless vs. Mayer, 21 Penn., 168.
Allen vs. Inhabitants of Joy, 60 Me., 124.
Curtis vs. Wipple, 24 Wis., 350.
Whiting vs. S. & F. R. R. Co., 25 Wis., 167.
U. S. vs. Chicago, 7 How., 185.
Pumpelly vs. Green Bay Co., 13 Wall., 166.
In re Eurepa Co., 96 N. Y., 42.

These decisions have all related to State laws, and have asserted this implied constitutional limitation as against the State. But if it is not competent for State Legislatures to enact laws of this character, much less is it competent for the Congress of the United States to pass them. Except as limited by the Constitution of the State, and by such implied limitations upon the power of taxation as the one now under consideration, the power of a State Legislature is unlimited. But when we come to the Federal Government, a different principle prevails. The State Legislature has all powers not expressly or impliedly withheld. But the Congress of the United States has no powers except such as are expressly conferred. It must be able to show that any act or part of an act passed by it is in execution of one of the powers specified in Article 1, Section 8 of the Constitution, or its act is void. And the building up of private enterprises or the encouragement of particular industries by the aid of public moneys is not one of these powers.

In McCulloch vs. State of Maryland, 4 Wheaton, 316,

this Court said: "This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise as long as our system shall exist."

And in Marbury vs. Madison, 1 Cranch., 137, the language of the Court was:

"The Government of the United States is of the latter description (*i. e.*, limited). The powers of the Legislature are defined and limited, and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restricted. The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.

It is sought to defend this kind of legislation under the "general welfare" clause in Subd. 1, Section 8, Article 1. But it is quite clear that the term general welfare in that clause means no more than the term "public benefit" as defined by the Courts in the cases above cited. The taxes which can be justified as "providing for the general welfare of the United States" must be for an object which directly and immediately promotes the general welfare. To give the phrase the latitudinarian construction sought to be given it here would justify Federal taxation for any purpose not distinctly immoral. Theatres and art galleries might be established in every large city with

funds drawn from the National Treasury, and maintained at national expense. Lyceums and gymnasiums might be provided for every town. All these promote the general welfare, and it is a question whether they would not promote it to a much greater degree than stimulating the production of an article here which can be imported in unlimited quantities, and which is very cheap.

Again, it is sought to defend this tax on the ground that bounties were contemplated by some of the founders of the Government, and that early in the history of the country bounties were actually created by law to encourage the fisheries, and that such laws remained in force for a considerable period, and were at length repealed without their validity having ever been questioned.

The answer to this is that while individuals may have taken broad views of the powers of the Federal Government at a time when the reaction was strong against the evils of a weak and nerveless Confederate Government, their views were not accepted. Moreover, it appears from the journal of the convention, which adopted the Constitution, page 261, that a proposition was offered to insert among the powers of Congress a power "to establish institutions, rewards and immunities for the promotion of agriculture, commerce, trade and manufactures," and that it was rejected.

As to the bounty given to the codfisheries, it was, as stated by STORY (Commentaries on Constitution, Vol. 1, Sec. 991), strenuously resisted on constitutional grounds at the time of its enactment, though its legality was not tested in the Courts, and since the discussion of this question by the courts and the establishment of the principle that taxation of this character is unconstitutional, no Congress, until the Fifty-first, has undertaken to assert this right.

We shall close this branch of the discussion. If manufacturing enterprises may not be aided and en-

couraged by taxation, if the devastation caused by fire and drouth can not be relieved by taxation, surely the encouragement of an agricultural pursuit, which is at present established in but few of the States, can not be accomplished by a bounty from the National treasury.

POINT III.

The entire Tariff Act is rendered null and void by the insertion of the bounty provision.

The law on this subject is thus stated by COOLEY, and the doctrine as stated by him is adopted in all the cases bearing on this subject.

"Where, therefore, a part of a statute is unconstitutional, that fact does not authorize the Courts to declare the remainder void also, unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the Legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section and yet be perfectly distinct and severable so that the first may stand though the last fall. The point is not whether they are contained in the same section, for the distribution into sections is purely artificial, but whether they are essentially and inseparably connected in substance. If when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained. The diffi-

culty is in determining whether the good and bad parts of the statute are capable of being separated within the meaning of this rule. If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other. But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invald portion. And if they are so mutually connected with and dependent on each other as conditions, considerations or compensations for each other, as to warrant the belief that the Legislature intended them as a whole, and if all could not be carried into effect the Legislature would not pass the residue independently,—then if some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them."

Cooley on Constitutional Limitations, Ch. 71, pp. 211, 212.

Let us apply these tests to the act under consideration, the bounty clauses and the others, and search out the answer to the following questions:

1st. Are these provisions connected in subject matter?

2d. Do they depend on each other?

3d. Do they operate together for the same purpose?

4th. Do they aim to accomplish a single object?

5th. Can that object be accomplished if the bounty clauses are striken out and the balance of the act retained?

6th. Are these provisions, conditions, considerations, or compensations for each other?

7th. Can we believe the Legislature would have passed the act without the bounty provisions?

First, then, what is the subject matter of this act? It is entitled, "An Act to reduce the revenues and equalize the duties on imports and for other purposes." There are obviously three ways of reducing the revenues. One is to lower the tax or exempt an article from duty. A second is to so increase the tax as to prohibit importation. A third is to appropriate or disburse the revenues. All three ways have been resorted to in this bill. The most conspicuous instance of the first way is the putting of sugar up to 16° Dutch standard on the free list. An illustration of the second is the placing of a duty on pearl buttons amounting to over 200% *ad valorem*. An example of the third is the sugar bounty. These provisions are all connected in subject matter. The subject matter is taxation. This is a tax law and all its provisions relate to that subject.

Second. Do they depend on each other? In a law which provides for both the raising of revenue and its disbursement provisions of each character must depend on each other. The money must be collected before it can be disbursed, and if it were not to be disbursed for any particular purpose so much less would need to be raised. Here in the same act Congress provides for collecting money as duties and bestowing it as bounties. It must be collected before it can be given away. And if it were not to be given away there would be no necessity for collecting so much. How much was needed or will be for these gifts *the act* does not say, and it is difficult to see how this Court can determine it as mat-

ter of law. It may be one amount in 1891 and a very different amount in 1905.

THIRD. Do they operate together for the same purpose? If the purpose of the act be truly stated in the title they certainly do, for they all reduce the revenue and have reduced it.

FOURTH. Do they aim to accomplish a single object? The chief object of this bill as proclaimed in Congress by its advocates was to protect American industries. The duty clauses aim to accomplish this object by limiting the importation of competing foreign products. The bounty clauses aim to accomplish the same object by indemnifying sugar producers for losses caused by competition.

FIFTH. Can that object be accomplished if the bounty clauses are stricken out and the balance of the act retained?

If the bounty clauses are stricken out and sugar is left on the free list, the object of the act to furnish the same protection to the sugar industry as is given to others will be defeated.

SIXTH. Are these provisions, conditions, considerations, or compensations for each other? It is matter of common knowledge that in a general tariff bill all the provisions are conditions, considerations, and compensations one for the other. The rate on every article is determined to a greater or less extent with reference to the rate on every other article. Taxes reduced on some necessitate increased taxes on others. The removal of the tax from sugar and the bounty thereby necessitated (on the principle of protection) for the American producer, it was estimated, would reduce the revenues sixty-five million dollars per annum. This had to be in part made up on other articles, and our laces were

selected as fit subjects for increased taxation. No other reason for such increase existed, for cotton laces are scarcely made in this country, and silk laces not at all. In this connection we desire to call attention to the fact that in the report of the Senate Finance Committee accompanying the bill now the act under consideration, it was distinctly stated, as the reason, and the only reason, for increasing the tax on laces, that the decrease in the revenues caused by placing sugar on the free list necessitated the raising of increased revenue from other sources, and that it was deemed proper to put the burden upon articles of this character because they were luxuries. (see Appendix A of this Brief). Clearly the position of Congress as to our goods was this: "We will put sugar on the free list, give the sugar men a bounty, and make the importers of laces pay a good part of it."

SEVENTH. Can we believe the Legislature would have passed the act without the bounty provisions? No man who followed the proceedings in Congress or who is familiar with public affairs can believe this. The sugar schedule was the keystone of the whole bill. It was resolved to make sugar free, and as this would remove the protection demanded by the sugar interest, a logical application of the protective principle made the bounty absolutely necessary. All other provisions and rates were made to fit this plan.

We submit that the sugar bounty provisions are an essential integral part of the Tariff Act enacted by the last Congress; that they lie at the foundation of the whole bill; that while some kind of a tariff act might have been passed without this feature, this particular act in all its provisions would not have been. And that for this Court to strip it of this unconstitutional feature and leave the residue intact would be *legislation* by the

Court different from that which Congress would have enacted. In the language of the Supreme Court of Indiana, in Meshmeier vs. The State, 11 Ind., 482: "The Legislature pass an entire statute on the supposition, of course, that it is all valid and to take effect. The Courts find some of its essential elements in conflict with the Constitution, strip it of those elements, and leave the remaining portion mutilated and transformed into a different thing from what it was when it left the hands of the Legislature, *and it would be an act of legislation on the part of the Courts to put it in force. The Courts have no right thus to usurp the province of the Legislature.*"

Authorities are hardly necessary to sustain Judge COOLEY's statement of the principles which are to determine whether any part of a statute containing unconstitutional provisions may be upheld, but the following cases may be cited:

State vs. Pugh, 43 Ohio St., 98.
Warren vs. Mayor, 2 Gray, 85.
Lathrop vs. Mills, 19 Cal., 513.
Commonwealth vs. Hitchings, 5 Gray, 482.
Davis vs. State, 7 Md., 151.
Eckhart vs. State, 5 W. Va., 515.
Commonwealth vs. Potts, 79 Pa. St., 164.
Slanson vs. Racine, 13 Wis., 398.
Allen vs Louisiana, 103 U. S., 80
W. U. Tel. Co. vs. State, 62 Tex., 630.
Campau vs. Detroit, 14 Mich., 26.

It is suggested that the sugar bounty may be unconstitutional, but that we are not entitled to raise the question. *Who then can raise it?* Not the men who get it, surely. Not the importers of sugar, for their goods are exempted from taxation. Not the consumer of imported goods, for he could not show that he suffered special damage. Here in one act Congress puts an increased tax on our goods and appropriates the tax thus levied to an illegal purpose. And the Government has collected the tax from us, and in due time expects

to pay the bounty with it. And we are told we have no remedy; that we cannot show that the identical money we paid goes to the sugar bounty. If this contention can be sustained the collection of an illegal tax can never be restrained. We stand on the law as we have before quoted it from COOLEY: "It is competent for any one who in person or property is affected by the tax to appeal to the Courts for protection."

The report of the Senate Committee heretofore referred to (page 38) connects the increased duties on our laces with the sugar schedule, and, therefore, its bounty scheme, and shows conclusively as to our particular importations that the increased duty levied upon them is the direct result of the unconstitutional bounty scheme complained of. Whatever may be said as to other articles upon which duties are imposed by this act, it appears by the report of the Senate Committee that the increased duty on our goods was neither for protection to our home industries, nor to decrease the revenue as declared in the title of the act, but to make up the deficiency in whole or in part caused by the changes made in the sugar schedule, which changes included the scheme for paying out bounties to sugar growers.

POINT IV.

Section 3 of the act commonly called the "reciprocity section" is unconstitutional because it is a delegation to legislative power of the Executive.

The language of this section is as follows:

"That with a view to secure reciprocal trade with countries producing the following articles, and for this

purpose, on and after the first day of January, eighteen hundred and ninety-two, whenever and so often as the President shall be satisfied that the Government of any country producing and exporting sugars, molasses, coffee, tea and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea and hides, the production of such country, for such time as he shall deem just, and in such case, and during such suspension, duties shall be levied, collected and paid upon sugar, molasses, coffee, tea and hides, the product of or exported from such designated country, as follows namely. (Then follow the rates, which need not be repeated here.)

It will be observed that to the President is delegated by this section the power to determine, as to the five articles therein specified, all of which are practically necessaries of life: 1st. From what countries they must pay duty. 2d. When they thall begin to pay duty. 3d. How long they shall continue to pay duty. The only point not left to his discretion is the amount of duty which they shall pay.

The Constitution says, Article 1, Section 8: "The Congress shall have power to lay and collect taxes, duties, imposts and excises."

In his Essay on Civil Government, Locke says (§ 142): "The Legislature neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have."

In Cooley's "Constitutional Limitations," Ch. 11, p. 137, the principle of constitutional law is thus stated:

"One of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority there it must remain; and by the constitutional agency alone the laws must be made until the Constitution itself is changed. The power to whose judgment, wisdom and patriotism, this high prerogative has been entrusted, cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust."

It would seem that if there was any class of laws to which this principle should be strictly applied it is tax laws; laws by which the Government puts forth its strong arm to take the property of the citizen from him to apply to its own purposes, or, as in this act, to bounties. No power conferred upon the Legislature should be more jealously guarded or more cautiously or more scrupulously exercised. Yet here we have a law which delegates to the President of the United States the power, by a mere stroke of his pen, to impose an onerous and burdensome tax on articles, all of which are the subject of daily consumption by the people of the whole country, some of which can not be produced here, and none of which can be produced here in sufficient quantities to supply the people's needs. It delegates to him the power of determining when to tax them and how long to tax them. On these questions his judgment, wisdom and patriotism are substituted for that of the people's representatives. It is no defense to the objection that this is obnoxious to the Constitution to say that he has not had conferred upon him the power to regulate the amount of the tax. *This is merely saying that a law is not bad because it might have been worse.* He is to

exercise this power not once or twice, but whenever and so often as he deems proper. He may in January suspend the free list as to coffee from Brazil, in February on tea from China, in March on sugar from the West Indies, and in April on hides from Brazil. It is no defense to say that he is not likely to abuse this power. The present incumbent may not do so, but are we to take the chances that we shall never have a venal or corrupt executive. Can constitutional safeguards be set aside on the pretext that with wise and virtuous rulers they are no longer necessary. In the language of Hamilton (Federalist No.22) "In republics persons elevated from the mass of the community by the suffrages of their fellow-citizens to stations of great pre-eminence and power, may find compensations for betraying their trust, which, to any but minds animated and guided by superior virtue may appear to exceed the proportion of interest they have in the common stock, and to overbalance the obligations of duty." Nor is it necessary to conceive of a corrupt President to see how this power could be abused. Even supposing the President to be the wisest and ablest man in the United States, he would not be gifted with omniscience and infallibility of judgment. In determining whether the tax laws of other countries are reciprocally unjust to the United States, he must necessarily act upon expert testimony, information, and advice of others. And when it is considered that the very persons on whom he would have to rely for information on these questions might, and probably would, have enormous financial interests at stake dependent on his decision, the danger of entrusting him with such a power is manifest. When tax laws and revenue regulations are under consideration in Congress, the publicity which they receive and the opportunity that all the people have to make such representations as they may desire to the members of Congress, together with the difficulty and danger that surround an attempt to deceive or debauch a majority

of that body, protect the country to a great degree against unwise or unjust legislation. But when the question of whether a tax shall be laid upon the necessaries of life is left to one man who hears representations in secret and decides the question in the privacy of his office or the secret and select circle of his cabinet, who shall say that the interests of the people are sufficiently considered or protected.

Nor is it any defense to the granting of this power to say (what is probably the fact) that it was never intended to be exercised and is never likely to be exercised. The rights of the people to be secure in their persons and property cannot be allowed to rest on probabilities. For the purpose of determining whether this is valid legislation we must assume that Congress intended this power to be exercised and must contemplate the possibility that it will be exercised.

It has been sought to defend this power on the ground that laws have frequently been passed to take effect upon the happening of a future event, and that such legislation has been pronounced constitutional. Without discussing the soundness of such judicial decisions, it is sufficient to say that such cases are not parallel to the one now under consideration. A law may take effect on the happening of a future event. An event is a *fact*. The question whether it has or has not happened is one which any body can readily determine. No exercise of judgment or wisdom is necessary. It is a matter of simple intelligence. All questions that involve judgment and discretion are passed upon by the Legislature. But in the case of this law, none of such questions were passed upon by the Congress. They were all committed to the wisdom, discretion and patriotism of the President.

A case much relied on in support of this section is Brig Aurora vs. The United States, 7 Cranch, 382. An act had been passed by Congress (2 Stat. at Large, p. 605), the fourth section of which was as follows :

"That in case either Great Britain or France shall, before the third day of March next, so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, which fact the President of the United States shall declare by proclamation, and if the other nation shall not within three months thereafter so revoke or modify her edicts in like manner, then the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eighteenth sections of the act, entitled "An Act to interdict the commercial intercourse between the United States and Great Britain and France and their dependencies and for other purposes," passed March 1st, 1809, shall, from and after the expiration of three months from the date of the proclamation aforesaid, be revived, and have full force and effect so far as relates to the dominions, colonies and dependencies, and to the articles the growth, produce or manufacture of the dominions, colonies and dependencies of the nation thus refusing or neglecting to revoke or modify her edicts in the manner aforesaid. And the restrictions imposed by this act shall, from the date of such proclamation, cease and be discontinued in relation to the nation revoking or modifying her decrees in the manner aforesaid.

Under this act the District Court for the territory of New Orleans condemned the cargo of the brig Aurora. An appeal was taken to the Supreme Court and the point was taken whether the act of March 1st, 1809, was revived by the President's proclamation.

The Court referred briefly to the point, saying:

"We can see no sufficient reason why the Legislature should not exercise its discretion in reviving the Act of March 1st, 1809, either expressly or conditionally as their judgment should direct."

There are three reasons why this case should have little weight as an authority:

1st. It was decided at a very early date, before the

principles of Constitutional Government had received the consideration and discussion which they have since received.

2d. The point does not seem to have been carefully considered. At any rate the bare conclusion is stated without any exposition of the principles involved, and with no statement of the reasons on which it is based. Such cases are seldom deemed entitled to be considered as authoritative except on the precise question involved.

3d. The power delegated to the President by the act then under consideration was not a taxing power, and the determination of the question whether a European Government had so modified its edicts as to cease to violate neutral commerce, while it involved a certain amount of judgment, was not such an abdication of legislative functions as that in Section 3 of the Tariff Act. The power there delegated to the President was almost a war power, conferred at a time when our relations with England and France were strained, and relating to a subject which two years later involved us in a war with England. The power now conferred upon the President is a taxing power conferred at a time when we are at peace with all the world.

The practical result of this section, as we learn from the proclamations of the President of the United States, has been to cause the negotiation of so-called reciprocity treaties, by which other nations, to prevent the President from exercising the powers conferred by this section, make certain concessions in favor of our commerce. These treaties, it seems, are not to be submitted to the Senate for ratification, and thus another constitutional provision is disregarded. True, the President does not bind the United States to do anything they have not already done, but none the less the

whole scheme is foreign to the Constitution. On this subject Hamilton says in the Federalist (No. 74):

"However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the power of making treaties, it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years duration. It has been remarked upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much at stake in the government to be in any material danger of being corrupted by foreign powers; but that a man raised from the station of a private citizen to the rank of chief magistrate, possessed of but a moderate or slender fortune, and looking forward to a period not very remote when he may probably be obliged to return to the station from which he was taken, might sometimes be under temptations to sacrifice duty to interest which it would require superlative virtue to withstand. An avaricious man might be tempted to betray the interests of the State for the acquisition of wealth. An ambitious man might make his own aggrandizement by the aid of a foreign power the price of his treachery to his constituents. *The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.*"

The treaty-making power under the Constitution is vested in the Senate as well as in the President. They must act jointly. They must both agree as to the rights of the foreign State and the obligations of the United States. Congress cannot by legislation deprive the Senate, even by the Senate's own consent, of this right and obligation. Hence the discretion granted by

this section is in effect giving to the President alone what the Constitution has given to the Senate and President jointly, and the section is therefore void.

Having stated what we consider to be the principles involved in this case, let us refer to some of the authorities.

In Thorne vs. Cramer, 15 Barb., 112, a bill had been passed by the Legislature, with the provision that it should take effect only after a ratification by the people at an election. This act was held unconstitutional, the Court using the following language:

"Upon what principle then can the representatives transfer to any other person or persons the power of making, or what is tantamount the power of breathing life and efficacy into laws? *Suppose they should attempt to clothe with this authority some individual, as the Governor or Attorney-General, would not the common sense of the whole community be shocked at their dereliction of duty.*

In Rice vs. Foster, 4 Harr., 479, an act had been passed by the Legislature of Delaware authorizing the "people to decide by ballot whether the license to retail intoxicating liquors shall be permitted among them." This act was held unconstitutional and void.

"The powers of government," says the Court, "are trusts of the highest importance, on the faithful and proper exercise of which depend the welfare and happiness of society. These trusts must be exercised in strict conformity with the spirit and intent of the Constitution by those with whom they are deposited; and in no case whatever can they be delegated to any other body or persons, not even to the whole people of the State and still less to the people of a county. It is a plain proposition of law that a power or authority vested in one or more persons to act for others involving in its exercise judgment and discretion, is a trust and confidence reposed in the party which cannot be transferred or delegated. The making of laws is the high-

est act of sovereignty that can be performed in a free nation, and therefore the legislative power may be truly said to be the supreme power of a State."

And in the concurring opinion of Justice HARRINGTON, p. 500. "A law declaring an offence or providing a punishment or *repealing an existing law* on condition that the Governor or any other individual shall assent to it, is plainly unconstitutional. It is the naked veto power. It substitutes for, or rather adds to, the legislative will another will which it makes necessary to the existence of the law. This is unconstitutional. No one doubts it. No one pretends that a law with such a condition would be good."

In State vs. Simons, 32 Minn., 540, an act had been passed providing that when any territory wished to be incorporated as a village it should present a petition to the Court which was to decide upon the facts, and if it were satisfied that the interests of the people of the territory would be promoted by the incorporation, make an order to that effect, &c. The Court held the act unconstitutional. MITCHELL, J., said: "It will be observed that under the provisions of this act the Legislature has not, except as to certain preliminaries, determined or defined the facts or things upon the existence of which the territory shall be incorporated as a village. It will also be observed that the duty of the Court is not simply to inquire and ascertain whether certain specified facts exist, or whether specified conditions have been complied with, but to proceed and determine whether the interests of the inhabitants will be promoted by the incorporation of the village, and, if so, what land ought in justice to be included within its limits. In short, it is left to the Courts to decide whether public interests will be subserved by creating a municipal corporation, and the *determination of this question is left wholly to its views of expediency and public policy.*

That the determination of such questions involves the exercise of purely and exclusively legislative power, seems to us too clear to admit of argument. Had the Legislature by the act in question *fixed and specified all the conditions and facts* upon which the incorporation of certain territory should depend, we do not question their right to refer to some tribunal or body the question af ascertaining and determining these facts and conditions."

In *ex parte* Wall, 48 Cal., 279: The Legislature had passed a liquor law of the class known as local option laws. It was held void. The Court said (per McKINSTRY, *J.*):

"But it does not follow that a statute may be made to take effect upon the happening of any subsequent event which may be named in it. The event must be one which shall produce such a change of circumstances as that the lawmakers, in the exercise of their own judgment, can declare it to be wise and expedient that the law shall take effect when the event shall occur. The Legislature cannot transfer to others the responsibility of deciding what legislation is expedient and proper, *with reference either to present conditions or future contingencies*. To say that the legislators may deem a law to be expedient, provided the people shall deem it expedient, is to suggest an abandonment of the legislative function by those to whose wisdom and patriotism the Constitution has intrusted the perogative of determining whether a law is or is not expedient. Can it be said in such case that any member of the Legislature declares the prohibition or enactment to be expedient?

"A statute to take effect upon a subsequent event, when it comes from the hands of the Legislature, must be a law *in præsenti* to take effect *in futuro*. On the question of the expediency of the law the Legislature must exercise its own judgment definitely and finally. If it can be made to take effect on the occurrence of an

event the Legislature must declare the law expedient if the event shall happen, but inexpedient if it shall not happen. *They can appeal to no other man or men to judge for them in relation to its present or future propriety or necessity;* they must exercise that power themselves, and thus perform the duty imposed on them by the Constitution."

In State, Gaines Pros. vs. Hudson County Avenue Commissioners, 37 N. J., 12, an act had been passed by the Legislature of New Jersey creating a board of commissioners to open a street or avenue across the County of Hudson. The expenses were to be raised by tax on lands, goods and chattels in the County of Hudson, and the commissioners were to determine the proportion of such tax to be raised on the lands, goods and chattels in any township or ward of any city or town. The act was held unconstitutional. The Court, per BEASLEY, C. J., said: "But from what I have said, I think it must be, upon careful consideration, conceded that a power unchecked except by the obligation of fairness and a reasonable discretion is vested in this body of persons to distribute this tax *according to its judgment of what is just and right* among the various townships of this county. Holding this opinion, it seems to me necessarily to result that this act cannot be enforced. The reason of this conclusion is that *the Legislature has transferred to these commissioners a part of the law-making power.*"

In State vs. Swisher, 17 Tex., 441, a liquor law had been passed, to take effect or not according to the result of a popular election. It was held unconstitutional, the Court saying: "Besides the fact that the Constitution does not provide for such reference to the voters to give validity to the acts of the Legislature, we regard it as repugnant to the principles of representative government formed by our Constitution."

In Clarke vs. Mobile, 67 Ala., 217, an act had been passed by the Legislature of Alabama, providing that

whenever any State should require of Alabama insurance companies a greater deposit of security than was required by the law of Alabama, then insurance corporations organized under the laws of such a State should be required to make a like deposit with the Treasurer of Alabama. The Supreme Court, holding the act unconstitutional said (per SOMERVILLE, J.):

"This section of the Code authorizes in effect the Legislature of Mississippi, speaking through its statutes, which are the subject of extrinsic proof and not of judicial knowledge in our courts, to fix by law the amount which the Treasurer of Alabama shall demand of appellants as a license tax to do business in this State. If the law-making power of that State should in a day modify, amend or repeal their revenue laws, *ipso facto* such legislative action would modify, amend or repeal the legal operation of our laws, provided the principle contended for by appellant's counsel is a sound and prevailing one. This cannot be, for it would be confiding to a foreign jurisdiction that legislative discretion which the General Assembly of Alabama are constitutionally bound to exercise themselves and which they cannot delegate or commit to another."

Among other cases bearing on this general question may be cited the following:

Grim vs. Weissenberg School District, 57 Penn St., 433.
Broadhead vs. Milwaukee, 19 Wis., 652.
State vs. Weir, 33 Iowa, 134.
Farnsworth Co., vs. Lisbon, 62 Me., 62.
Willis vs. Owen, 43 Tex., 41.

We submit that a statute which delegates to the Executive the discretion to determine when and for how long and on what portion of the importations of a particular article (according to the country of its growth or production) a tax shall be levied according to his judgment and discretion as to the fairness and justice

of it, fixing only the amount of such tax when levied, is an unconstitutional delegation of the taxing power.

POINT V.

The incorporation in this act of the unconstitutional delegation of the taxing power in Section 3, renders the whole act void.

We need add but little under this point to what has been already said under Point III.

This section relates to the same subject matter as the main portion of the bill, viz.: taxes on imports. It is an essential part of the scheme contemplated by said act. It was certainly one of the conditions and compensations for various other parts of the bill, for it recites substantially that the free introduction into the United States of sugar, molasses, coffee, tea and hides was enacted with a view to securing reciprocal trade with countries producing those articles and for that purpose.

Can the Court believe that Congress would have passed this act without this section? The answer is, *Congress refused to do so.* This section was not in the bill as it passed the House. It was incorporated as an amendment by the Senate. The House refused to concur in the amendment. The Senate insisted on it. The Conference Committee of the two Houses retained it with an amendment simply as to the time of its taking effect (see Conference Report). How then can it be said as matter of law that the act would have been passed without it. It is a matter of public knowledge that it was regarded at the time, and has been since, as one of the vital parts of the bill.

We have now concluded our review of the grave and momentous questions involved in this case. We respectfully submit that each of the objections urged against this act is sufficient to overthrow it. But when we find them combined, when we find a tax law obnoxious to all these explicit provisions of the fundamental law and principles of constitutional government, how can it be sustained?

Much will probably be said about the consequences that will follow the overthrow of this act. We submit that such considerations should have no weight. One beneficial result would be, that Congress would display more care in the enactment of laws, and would not openly and flagrantly disregard the decisions of this Court. In a note to his Treatise on Constitutional Limitations, speaking of the disposition shown by some of the Courts to hesitate in holding acts to be unconstitutional, Judge COOLEY says (Constitutional Limitations, p. 86, Note 2): "These cases certainly presented very strong motives for declaring the law to be what it was not; but it would have been interesting and useful if either of these learned Courts had enumerated the evils that must be placed in the opposite scale when the question is whether a constitutional rule shall be disregarded; *not the least of which is the encouragement of a disposition on the part of legislative bodies to set aside constitutional restrictions in the belief that if the unconstitutional law can once be put in force, and large interests enlisted under it, the Courts will not venture to declare it void, but will submit to the usurpation no matter how gross and daring.* We agree with the Supreme Court of Indiana that in construing constitutions, Courts have nothing to do with the argument *ab inconvenienti*, and should not "*bend the Constitution to suit the law of the hour*" (Greencastle Township vs. Black, 5 Ind., 557), and with BRONSON, J., in what he says in Oakley vs. Aspinwall, 33 N. Y., 547–568: "It is highly probable that inconveniences will

result from following the Constitution as it is written. But that consideration can have no force with me. It is not for us, but for those who made the instrument, to supply its defects. If the Legislature or the Courts may take that office upon themselves, or if, under color of construction or upon any other specious ground, they may depart from that which is plainly declared, the people may well despair of ever being able to set any boundary to the powers of the Government. Written constitutions will be more than useless. Believing as I do that the success of free institutions depends upon a rigorous adherence to this fundamental rule, I have never yielded to considerations of expediency in expounding it. There is always some plausible reason for latitudinarian constructions, which are resorted to for purposes of acquiring power, some evil to be averted or some good to be attained by pushing the powers of the Government beyond their legitimate boundary. It is by yielding to such considerations that constitutions are gradually undermined and frequently overthrown. My rule has ever been to *follow the fundamental law as it is written, regardless of consequences.* If the law does not work well the people can amend it, and inconveniences can be borne long enough to await that process. But if the Legislature or the courts undertake to cure defects by forced or unnatural constructions, *they inflict a wound upon the Constitution which nothing can heal.* One step taken by the Legislature or the judiciary in enlarging the powers of the Government opens the door for another *which will be sure to follow*, and so the process goes on until all respect for the fundamental law is lost, and *the powers of the Government are just what those in authority please to call them.*'"

These vigorous words are particularly applicable to the act now under consideration. So far as the sugar bounty and the reciprocity provisions are concerned, Congress did not err through ignorance, but openly set

the courts at defiance. An examination of the Congressional Record will show that when this bill was under consideration by the Senate, the decisions of the courts, including this Court, were read to them, and they were solemnly warned that they were overriding the Constitution. Loan Ass'n v. Topeka was read to them while the sugar bounty was under discussion, and when the reciprocity clause was reached, the distinguished constitutional lawyer who represented the State of New York in the Senate warned them of its unconstitutionality, and offered an amendment designed to make the scheme comport with the Constitution, but his amendment was contemptuously rejected. When citizens whose property is subject to heavy taxation find their representatives in Congress spurning the Constitution they are left without hope of redress if this Court hesitates to protect them. They appeal to it with confidence that it will consider their protest in the spirit thus expressed by the Supreme Court of Ohio:

"But when the unconstitutionality of an act is very clear to the Court, it is clothed with no higher function, it is invested with no more exalted duty, than to say so with promptness. To surrender our convictions to a mere sentiment, or to an apprehension that it may seem an arrogant assumption of superior wisdom to declare a legislative enactment invalid, would be a weak disregard of a plain duty as dangerous to the State as the void enactment itself. Within the limits of the Constitution there is safety and stability. Beyond them there is always peril and uncertainty."

State vs. Pugh, 43 Ohio St., 98.

But, as matter of fact, no disastrous public consequences would ensue from a decree of this Court holding this act unconstitutional. It has proved to be what its title professes "An Act to reduce the revenue." More revenue was collected under the tariff act of 1883 than

has been collected under this act, and if the act were stricken from the statute books an increased revenue would result at once. Importers are not asking for the refund of any money by the Government except what has been illegally exacted from them, and the increased revenues caused by a return to the act of 1883 would readily supply the moneys necessary to make such refunds. The business of the country might be temporarily disturbed, but it would be a disturbance followed by renewed vigor and rapid improvement.

The so-called act of October 1st, 1890, entitled "An Act to reduce the revenues and equalize duties on imports" is unconstitutional and void. The decision of the Circuit Court of the United States for the Southern District of New York affirming the action of the Board of General Appraisers upholding the act as constitutional should be reversed, and the case should be remanded with directions to reliquidate the entry by assessing duty on the goods under the tariff act of March 3, 1883, at 40% *ad valorem* on the cotton laces and 50% *ad valorem* on the silk laces.

CHARLES CURIE,
W. WICKHAM SMITH,
Counsel for Appellants.

APPENDIX "A."

H. R. 9416.

AS REPORTED TO THE SENATE FROM THE COMMITTEE ON FINANCE, JUNE 18, 1890,

WITH

TABLES

SHOWING

DUTIES COLLECTED UNDER EXISTING TARIFF.

NOTES EXPLANATORY OF PROPOSED CHANGES FROM PRESENT LAW,

AND

ESTIMATES OF THE PROBABLE EFFECT UPON THE REVENUE.

PAGE 83:

355. Laces, edgings, embroideries, insertings, neck rufflings, ruchings, trimmings, tuckings, lace window curtains, and other similar tamboured articles, and articles wrought by hand or machinery, embroidered and hemstitched handkerchiefs, and articles made wholly or in part of lace, rufflings, tuckings or ruchings, composed of flax, jute, cotton or other vegetable fiber not specially provided for in this act, sixty per centum *ad valorem*.

EXPLANATION OF CHANGES.

355. This is an increase from thirty and forty per cent. to sixty per cent. *ad valorem*.

The necessity for increasing the revenue from some

source to offset the large reduction in revenue likely to result from placing sugar on the free list, has led the Committee to propose an increase of duty upon these articles of luxury.

PAGE 97 :

394. Laces and embroideries, neck rufflings and ruchings, clothing ready made, and articles of wearing apparel of every description, including knit goods, made up or manufactured wholly or in part by the tailor, seamstress or manufacturer, composed of silk, or of which silk is the component material of chief value, not specially provided for in this Act, sixty per centum *ad valorem*.

EXPLANATION OF CHANGES.

394. The articles embraced in this paragraph are luxuries, and for the reasons heretofore stated, in order to offset the decrease in the revenue from other sources the Committee believes the present rate of duty should be increased.

Office Supreme Court U. S.
FILED.
OCT 6 1891
JAMES H. McKENNEY,
CLERK.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

CHARLES STERNBACH ET ALS.,
Appellants,
vs.
THE UNITED STATES.

No. 1050.

APPELLANTS' BRIEF.

EDWIN B. SMITH,
STEPHEN G. CLARKE,
Of Counsel.

STANLEY, CLARKE & SMITH,
Appellants' Attorneys,
120 BROADWAY,
New York City.

C. G. BURGOYNE, WALKER AND CENTRE STS., NEW YORK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

CHARLES STERNBACH ET AL.,
Appellants,

vs.

THE UNITED STATES.

No. 1050.

APPELLANTS' BRIEF.

Statement.

October 7, 1890, the appellants imported into New York certain colored cotton goods, exceeding two hundred threads to the square inch, and valued at over fifteen cents per square yard, which were there entered the following day, and the collector assessed duty thereon at 45% *ad valorem*, under Schedule I., "Cotton Manufactures," paragraph 348, of the first section of the alleged act of Congress, chapter 1244, entitled "An act to reduce the revenue and equalize the duties on imports, and for other purposes," purporting to be approved October 1, 1890. (26 Stats. 591–2.) Against this assessment the importers seasonably protested, claiming their goods to be dutiable at 40% *ad val.*, under the Act of March 3, 1883, Schedule I. (22 Stats. 522 mid. and Heyl's Dig. 321.) which the protestants asserted to be in full force, and not repealed nor super-

seded by the supposed act of October 1, 1890, which never passed the House of Representatives and Senate. (Rec. pp. 9 to 11.)

The "third" clause of the protest set out that the *bill* (bearing the title of this alleged act of Oct. 1, 1890) which did pass the House of Representatives and the Senate was never presented to the President, as required by the Constitution, and was never signed nor approved by him. (*Id.* 10 middle.)

The next paragraph of the protest declared the act of 1883 applicable to these importations, because the supposed act of Oct. 1, 1890, was never enacted in conformity with paragraph 2, Sec. 7, Art. 1 of the Constitution of the United States; in that (1) the bill which did pass both branches of Congress was never presented to the President; (2) that the bill to which the President affixed his signature never passed either House of Congress; but was other than and different from any bill which actually passed the House of Representatives and Senate. (Rec. 10.)

The alleged act of 1890 was protested against as unconstitutional because of its third section; (26 Stats. 612.) that the power purporting to be thereby given to the President to continue, suspend and impose duties, is a power vested in Congress, which cannot be delegated to the President. (Rec. 10, 11; 26 Stats. p. 612.)

The concluding two specifications of the protest base the unconstitutionality of this alleged act of Oct. 1, 1890, upon the provisions of the Sugar Schedule (E) of its first section, paragraph 231 (26 Stats. 583) giving a bounty upon the production of domestic sugar, from beets, etc., grown within the United States. (Rec. 11.)

The Board of U. S. General Appraisers, upon due appeal to them taken, by the importers, affirmed the collector's decision. (Rec. 11, 12.)

This Board, in its return to the United States Circuit

Court for the Southern District of New York, made in obedience to an order of that Court, stated the facts of this case—omitting the arguments, citations of authorities, hypotheses and observations (improperly, as it seems to us) mingled with the statement in the return (Rec. 4 to 9) substantially as follows:

The proceedings of Congress, of which we are required to take judicial notice, bear out the fact that the bill which passed both the House of Representatives and the Senate contained the following clause *as part of section 30*: . . .

"Sec. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5. It shall be the duty of the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the Treasury not otherwise appropriated."

The Senate opposed this clause of the law and receded from their opposition only after a conference was ordered.

In engrossing the bill, the clause in question was omitted, and the President signed the engrossed bill in its defective condition. (Rec. 5; fols. 11, 12.)

To review the Board's affirmance of the Collector's action, the importers made the application to the U. S. Circuit Court provided for in section 15 of the act of June 10, 1890, c. 407, sec. 15. (26 Stats., 138.)

The errors of fact assigned were, in holding that the alleged act ever passed the House of Representatives

and Senate in manner and form as it now appears of record in the Department of State; and that the bill hereinbefore mentioned, which passed the House of Representatives and Senate, was ever presented to the President, as required by the Constitution, or ever signed or approved by him. (Rec. 1.)

The errors of law were, in holding the alleged act of 1890 not unconstitutional because of its third section; and because of the Sugar bounty, Sec. 1, paragraph 231; in holding it had been passed by the Senate and House of Representatives and signed by the President in accordance with the Constitution; and in holding the merchandize dutiable at 45% under alleged act of Oct. 1, 1890, instead of 40% under the act of March 3, 1883. (Rec. 1, 2.)

After a hearing (Rec. 4 bottom) upon the petition for review, the Circuit Court in all things affirmed the decision of the board of general appraisers (Rec. 5 top) but allowed the present appeal from such decree of affirmance. (Rec. 14 bottom.)

Assignment of Errors.

The appellants assign for error,

(1.) The affirmance by the U. S. Circuit Court of the action of the board of general appraisers, which affirmed the collector's decision. (Rec. 5 top.)

(2.) That the United States Circuit Court erred in not reversing the action of the board of general appraisers, and in not deciding that appellants' said importations were dutiable at 40% *ad valorem* under the said act of March 3, 1883, because the alleged act of October 1, 1890, never became a law in conformity with the requirements of the Constitution, in that the bill which passed both houses of Congress was never presented to the President of the United States, while the putative

bill which was signed by the President never passed either the House of Representatives or the Senate;—also because said supposed act of October 1, 1890, is unconstitutional and void in that the provisions of paragraph 231, Schedule E, of its first section (26 Stats. 583) directs the payment of bounties, from any moneys in the Treasury not otherwise appropriated, to the producers of sugar therein mentioned; and is also unconstitutional and void in that it assumes, in its third section (26 Stats. 612) to delegate to the President the power to suspend the free importation of specified articles, and to exact the designated duties thereon, according to his opinion of the legislation of other countries.

POINTS.

I.

Under that clause of section 15, act of June 10, 1890, c. 407 (26 Stats. 138) which requires the board of general appraisers, upon the order of the Circuit Court, to return thereto "the record and the evidence taken by them, together with a certified statement of the *facts* and of their decision *thereon*, that board, in their return in the cause at bar—after stating that the bill which passed both houses of Congress contained a (recited) portion of section 30 (Rec. 5) which is not in the document which the President signed—say ;—

"It is a settled maxim that every law will, in the first instance, be presumed to be constitutional until the contrary is made clearly to appear. All reasonable doubts must be resolved in favor of the validity of the given law." (Rec. 6 top.)

We wish to premise that, while this truism is applicable to those objections to this act which are based upon the indicated provisions of its first and third sections, it has not the slightest applicability to the inquiry whether or not this bill ever became a law by consent of Congress, and the observance of the forms prescribed for this purpose by the Constitution.

Indeed, the same regard for the constitutional privileges and duties of a co-ordinate branch of the government, which has led to the enunciation of the principle above referred to, should induce ready assent to the proposition that no bill should be accepted as law which has not, in its entirety, been concurred in by each branch of the legislature.

The cases to which this maxim applies are those in which the legislature has indubitably evinced its desire to regulate particular matters in a specified way, there being no doubt of its purpose as to the entire enact-

ment, but the inquiry is presented for judicial determination whether the whole act, or some provision therein, does not exceed the power of regulation in that behalf entrusted to the legislature; or whether the assumed power has been so entrusted at all.

In such cases, the aid of the Court is invoked to nullify the avowed purpose of the legislature:—here, we ask that an act to which (in its promulgated form) it is admitted the legislature never did assent shall not be treated as a declaration of its will.

To adjudge that nothing shall be deemed law to which it has not, *in his verbis* assented is to respect and protect its prerogative at least as much as it is to maintain its expressed will in a doubtful case.

This inquiry is not merely into the *validity*, but the *existence*, of this statute;—not is it valid? but *is it*, at all? It denies the *exercise*, not the possession, of legislative power.

As to this, the *facts* being judicially known, there is no room for presumption.

The authority referred to by the Gen. Appr. (COOLEY, Const. Lims., 6th ed., 216) at the page indicated, applies the principle *only* to an act "passed with all the forms and ceremonies *requisite* to give it the force of law;" citing Wellington, 16 Pick., 87, where SHAW, C. J., employs these same words.

Talbot v. Hudson, 16 Gray, 422.
Ogden v. Saunders, 12 Wh., 270.

II.

Although the founders of our Constitution were mostly of English descent, imbued with the ideas and familiar with the legislation of that country, so far as the methods of administrative justice and the affairs of daily life were concerned, they did *not* propose to make the frame of the new government correspond with that of the mother country, as they understood its principles.

Some recent writers have discovered that neither the colonists, nor those in England who (like Mr. Justice BLACKSTONE) assumed the function of instruction in constitutional principles, nor learned foreigners (like Montesquieu) who philosophized thereon, really understood the character and attributes of the system under which they lived, or about which they discoursed.

1 Bryce, Am. Com. 26, 27.
Fiske, Crit. Period Am. Hist. 68 bot.
1 Hare, Am. Const. Law, 1 3.
1 Story, Const. § 882.
Hurd's Theory of Nat. Exist.

So far as the structure of our Government was affected by a knowledge of the British Constitution, the idea of it (correct or erroneous) then here actually entertained controlled; "and where the analogy fails, the difference arises from specific and well-defined causes, and is hardly less instructive than the resemblance." 1 Hare, Am. Con. L. 3.

The disagreement of opinion to which we have just referred will be found to relate to the extent of the rightful participation in and control over legislation by the King and House of Lords. (Fiske, Crit. Per. Am. Hist. 290–5, etc.) That differences of this character had arisen, and inevitably would arise, under like constitutions, was a compulsive reason for *the* radical difference between our chosen form of government and

that of the country from which we separated, to wit, that ours should be based upon a *written* constitution, which should define and limit the power of the different branches of the government thereby created—and especially should declare and determine the separation of governmental functions into departments, and the apportionment of powers between the executive, legislative and judicial authorities.

Reasonably or unreasonably, *the* branch against the encroachments of which they especially intended to provide was the executive.

Of the founders of the American Constitution Mr. Bryce observes;—

"They were terribly afraid of a strong executive, and desired to reserve the final and decisive voice to the legislature, as representing the people."

1 Am. Com., 219.

It was thought to be one of the chief advantages of a written constitution that it afforded the opportunity for this accurate division and distribution of authority and responsibility among several departments.

While his personal opinion is adverse to the policy of such a separation, Mr. Bryce (with all writers upon the subject) concedes that its necessity was strongly impressed upon the leaders at the time our constitution was adopted. 1 Bryce Am. Com. 26, 27.

"No general principle of politics laid such hold on the constitution-makers and statesmen of America as the dogma that the separation af the three functions is essential to freedom. * * * It had already been made the ground work of several State constitutions. It is always reappearing in their writings; it was never absent from their thoughts. * * *

Everyone who undertakes to describe the American system of government is obliged to follow the American division of it into three departments,—executive, legislative, and judicial." 1 Bryce, 26, 27; 35.

De Tocqueville, Dem. in Am.

1 Hare, Am. Const. Law, 9.

In his article upon Harrington, to whom he attributes the propounding of this idea of separation of powers to the English people, Prof. Dwight observes :—

" Here he supplied the very life-blood of an American commonwealth ; for if we omit these ideas from one of our constitutions, we might as well omit the constitution itself."

2 Polit. Sci. Q. 19 (March, 1887.)
Rutherford, Inst. Bk. II, c. IV, § VII.

This separation, in our constitution, is not absolute and complete.

In commencing No. 47 of the Federalist, Madison notices that

" One of the principal objections inculcated by the more respectable adversaries to the constitution, is its supposed violation of the political maxim that the legislative, executive and judiciary departments ought to be separate and distinct."

At the outset of the next paper (No. 48) Mr. Madison undertakes to show

" that unless these departments are *so far* connected and blended as to give to each *a constitutional control* over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained."

There is an able discussion of the separation and mutual check or inter-dependence of the departments in

Martin v. Ingham, 38 Kans. 654, 656 etc.

The extent to which the President should, by participation in acts of legislation, exercise a constitutional check and control over the legislative branch, was naturally much discussed.

The debates of that time, and all discussion of the subject since, have turned, almost entirely, upon his right to *negative* proposed legislation.

His approval is so perfunctory, as to escape observation.

The submission of the bill to him, and the appending of his signature thereto, is not so much to evidence his approval, as the fact that he does not desire to interpose any objection.

Federalist, No. 73.
1 Kent Com. 240.
1 Bryce, Am. Com. 52.
1 Story, Const. § 882.

In Hamilton's original draft of a constitution, the President had *only* a qualified negative on laws "about to be passed." He either negatived or did nothing.

1 Ham. Wks. 342.

The provision, as finally adopted, substantially intends the same thing.

He need indicate approbation in no other way than by signing; and even if he disapprove, he can permit the bill, or act, to ripen into law by a mere retention of it.

Gardner v. Collector, 6 Wall. 506.

The phraseology employed in Art. I of the Constitution with reference to the origination, amendment, and passage of bills, and their enactment into laws; and which concedes to the President a qualified and defined power of mere approval, or of stating objections, is as follows;

SECTION VII.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he

shall return it, with his objections to that House in which it shall have originated, who shall enter the objection at large on their Journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law. * * *

The terms thus selected vindicate our observations as to the import of the presidential signature; that it implies rather the non-existence of objections of sufficient gravity to be stated to the House in which the bill originated, than actual approbation of the several provisions of the bill. It by no means is understood to indicate that all or any, of these provisions would have received the support of the president had he occupied a seat in Congress.

That only the gravest considerations were thought likely to induce the return of a bill is shown by Madison's argument in the 73d number of the Federalist, where he refers to the hesitancy of any English sovereign to exert his prerogative, and the period that had elapsed since the negative of the Crown had been exercised.

Such was the tenor of all advocacy of the constitution.

This section provides in two ways for a bill becoming a law without the assent of the President; first, by his failure seasonably to express his dissent; and, secondly, by an overruling of his stated objections.

Now, for the first time in any court, is it contended that a bill to which (as signed by the president), neither House of Congress assented can be a law?

This contravenes the axiom that the legistative power embraces all the authority of a state, not expressly conferred upon some other branch; as well as the explicit language of section 7.

PATTERSON, J.—I consider it a sound, political proposition, that wherever the legislative power of a government is undefined, it includes the judicial and executive attributes.

Cooper v. Telfair, 4 Dall. 19.
Maynard v. Hill, 125 U.S. 205.

Of course, where the powers are defined, each branch possesses exactly the amount of power assigned, to be exercised as indicated, if any method of its exercise is prescribed.

To define is to limit;—both as to a power and its exercise.

In construing statutes judicially, it is an observation common to triteness, that "the legislative intent" is to govern.

We doubt if any court or counsel, using this expression, ever thought of it as including the considerations which constrained the executive signature thereto.

Accordingly, it is only *the* bill "which shall have passed the Senate and House of Representatives" that is to be presented to the President for his consideration.

His name affixed to a so-called bill which has not passed both branches of Congress is a mere nullity.

The assent of each House to the entirety of a bill is a *sine qua non* to its becoming a law; that of the President is not, since there are two contingencies in which it may become law, either without his assent, or despite his dissent.

III.

Before examining into the meaning of these terms—what a "bill" is, how it is "passed," and how any question as to just what did pass either or both Houses of Congress is to be determined—let us interject the observation that, even if the social-contract origin of civil government be an exploded theory (Fiske, Civ. Gov't 188) as a general proposition, yet it is certain that our national constitution is a written contract, the result of negotiation, of a *quid pro quo*, concession and compromise.

1 Story, Const. § 276 last line.

It was agreed that the rights of the people should be restricted or affected *only* by laws passed in the method specifically provided therefor.

Because our constitution is, pre-eminently, the result of agreement upon consideration, therefore it is to be construed like other written contracts; "the more a constitution partakes of the character of a solemn compact, the closer its construction must be;" the author specially applying this remark to the constitution of the United States.

Lieber, Leg. and Pol. Hermeneutics, c. VI. sec. X, § 5.
Hurd, Theory Nat. Exist. 121 bot.

A later writer observes that

"The English colonists were thus accustomed to written documents as the source of governmental power, and *the meaning of their provisions was the test of governmental limitations.*"

Sterne's Const. Hist. 2 top.
1 Bryce, Am. Com. 28.
2 Elliot's Deb.
Strictly construing the language. Peo. vs. Wemple, 125 N. Y., 489 bot.

IV.

In the course of a paragraph, Goldwin Smith incidentally observes that the Americans instituted "a written constitution, *in the keeping of a Supreme Court*, by which all powers and jurisdictions are *strictly* defined and limited," etc.

47 Contemp. Rev., March, 1885, p. 317.

It is for this Court, in the discharge of this duty of guardianship over the rights of the people and the functions of government, to declare whether or not, in relation to the matter of imposing, or authorizing the exaction of, the duties claimed by the administrative officers of the government in the case at bar, there has been such strict compliance with the requirements of the constitution, in the several stages of this legislation (up to and including the submission of a bill to the president for his consideration) as justifies compulsive enforcement of the demand made upon us.

(1.) Has this bill—as a *bill*, not as several sections, dependent or independent, passed both Houses of Congress?

(2.) How is this fact to be ascertained?

(3.) What must be the consequence, if the bill which passed was not presented to the President?—if one or more sections only, of a bill that passed, was signed by him?—or, in other words, one or more sections of such a bill were omitted from the document to which the presidential signature was affixed?

Reasoning a priori, as upon an abstract proposition, no other reply to the last inquiry were possible than that such signing is of *no* effect, appended to any other than a bill complete, as it passed Congress;—and there are just grounds to apprehend that other than purely

legal considerations must have led the board of appraisers, and the court below, to a contrary conclusion, in the present instance;—unless their action was merely *pro forma*, to present the question here.

A *bill* is the "form or draft of a law, presented to a legislature for enactment; a proposed or projected law."

Webster, Int. Dict. *h. t.*
1 Bouv. L. D. 241 *h. t.*
1 Rap. & L. L. D. 126 *h. t.*
May, Parlm. Pr. 479 et seq.
2 Steph. Com. 383.

The constitution treats and names the enactment proposed as a 'bill' up to the time of its submission to presidental scrutiny; and, if returned with objections and reconsidered, it is (in these proceedings) denominated by the Executive and Congress as a 'bill'—as it is by the constitution.

Courts and writers have said the bill also became, by its passage through both branches, an "*act*" of the legislature; which may become a law without the assent, or despite the objection, of the executive.

Southwark Bk. v. Com. 26 Pa. St. 450.
Wartman v. Phila. 33 *Id.* 208.
Chumasero v. Pott, 2 Mont. 285.

As passed, it is the crystallized will of both branches, each speaking by the prescribed majority. It is their definitive act.

If the President finds no such objection thereto as requires its return, he permits it to become a law, either by retaining it or by affixing his name; and, in the latter case, need indicate his approval in no other way than by his mere signature.

Gardner v. Collector, 6 Wall. 506.

When placed upon the statute-book, we always speak

of it as the "*Act* of Congress," approved (if such be the fact) upon an indicated date.

These observations are thrown out to indicate and emphasize the unity and entirety of "every bill which shall have passed" into an Act of Congress, to be submitted to the President.

Pangborn vs. Young, 32 N. J. L. 32 top.
State vs. Swift, 10 Nev. 176.

Legally speaking, for all purposes of enforcement and construction, Mr Gael, in his "Treatise upon the Analogy between Legal and General Composition," observes that "an Act of Parliament has no period but the last."

"The president cannot directly set in motion any scheme of legislation; he must await the *definitive* action of the two Houses, and add or refuse his consent to their *perfected* work." Pomeroy, Const. Law, 115, §175.

As the Pennsylvania Court state it, until it becomes law, the bill or act is a "mere *proposition*.".

Wartman vs. Phila., 33 Pa. St. 208.
2 Story, Const. §893.

According to the written contract which our Constitution is, legislation *must* proceed precisely as it directs.

McCulloch vs. Md., 4 Wh. 412.

"It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of *making* laws, as well as for an impartial interpretation and a faithful execution of them." Mass. Const. "Preamble."

A member, for himself or from his committee, submits a revenue (or other) bill to the House, as what he,

or his committee, *proposes* should be done. It is accepted by that body, as proposed, or as modified by requisite consent. It is then sent to the Senate as what the House *proposes* shall be done in that matter. The senate accepts it as it stands, or proposes modifying amendments. If modified, the House must accept the changes, or the Senate recede from them, or the work will fail of effect. It is only those propositions as to which both Houses agree—in other words "their perfected work"—that is submitted to the president. The Constitution recognizes the right of the different branches of Congress to suggest amendments, one to the other's proposition; but the President can only approve or object, if he does anything. He cannot modify.

Samuel Adams wrote to John Adams, 20 Nov., 1790:—

"The American legislatures are nicely balanced. They consist of two branches, each having a check upon the determination of the other. They sit in different chambers, and probably *often reason differently* in their respective chambers, on the same question. If they disagree in their decisions, by a conference their reasons and arguments are mutually communicated to each other. Candid explanations tend to bring them to agreement; and then, according to the Massachusetts constitution, the matter is laid before the first magistrate for his revision. He states objections," etc. Here is a mixture of three powers, founded in the nature of man; calculated to call forth the rational faculties in the great points of legislation into exertion; to cultivate mutual friendship and good humor;" etc., etc.

6 J. Adams, Works, 421.

If the Attorney-General's position be sustained, all this scheme may be robbed of its designed effect by the President's formal act of signing, intentionally or through somebody's inadvertence, a bill to which (in

whole or in part, and as submitted) one or both of the Houses of Congress has not assented !

Hardly (except through fraud) can a stronger example be supposed than this which is actually before you !

This revenue bill originated, and was perfected, in the House of Representatives; the Senate proposed an amendment, which the House *rejected :* then the Senate—so far as this proposal of theirs is concerned—*accepts* the original bill :—can the President's mere signature make the Senate-amended bill law, notwithstanding the rejection of that amendment by the House and the recession of the Senate from it ? *Neither* house ultimately agreed to the bill as signed;—and the matter was of such importance that the two houses divided upon it.

If in a trivial matter, between individuals, as to a few dollars' worth of salt or hay, the mental assent of one to the *precise* proposition of the other is required ; so much the more is this *aggregatio mentium* essential in the gravest concerns of state, with reference to the legislative imposition of restraints or burdens upon every citizen in the land. These should be imposed only upon those *precise* terms to which each branch of the legislative power has assented.

Oftentimes, in the discussion of legal questions, there is an inclination to divert the attention from the actually existing status, to inquire what conclusion would be reached upon a somewhat different state of facts.

So, it may be asked here, whether a professed act of Congress, signed by the President, corresponding in all respects but a single word or clause with the bill that has passed both houses of Congress, shall be deemed a nullity, because of such (perhaps trivial) omission.

The propriety of deferring the determination of any

such question until it arises, and is necessarily presented for decision, is obvious; but its answer need not be delayed because of any difficulty in making it, so far as the inquiry has any (if any) relevancy to the present discussion.

If the omission of the word be—*upon the face of the act itself* and by its context—clearly a clerical mistake, the Court, in applying the act, may correct this manifest error, by supplying that word which it is evident *both* Congress and the President intended, and supposed was used; and no omission can be deemed trivial or clerical which the Court does not feel at liberty so to rectify or ignore.

Board v. Heenan, 2 Minn. 330.
Smith v. Hoyt, 14 Wis. 252.

What the Court do, in such a case, is—not to treat the act as it reads with the word dropped out—but *to read the statute with the omitted word supplied.*

Worrall v. State, 12 Ala. 732.
Donohue v. Ladd, 31 Minn. 245–6.
Com. v. Marshal, 69 Pa. St. 332.
Kennedy v. Gibson, 8 Wall, 498, § 5.
Blanchard v. Sprague, 3 Sumn. 279.

If the principle *de minimis* can be applied to any such supposed trivial verbal mistake or omission, it certainly cannot be held to embrace an entire provision as to the insertion or rejection of which the two houses have divided, and have ultimately come to an agreement by conference.

That provision cannot be trivial or non-essential, which the house having the right to originate the bill inserts therein; which the other house considers and amends; to which amendment the house of representatives refuses to agree; each house maintains its position, until through a committee of conference it is mutually agreed that the Senate recede, and the bill

stand as it was originally ; to which both houses assent.

Moog v. Randolph, 77 Ala. 600–1.

If the omission in the printed statute be of some *essential* word or matter, going to a substantive part of the enactment, as it passed the Legislature, the Court will not supply it ; though the defect nullify the whole act.

Furey v. Gravesend, 104 N. Y. 410.
Smith v. Rines, 2 Sumn. 354–5.
Blanchard v. Sprague, 3 *id.* 280.
Lane v. Schomp, 30 N. J. Eq., 82.
Mayor v. State, 40 Md. 292.
Woodbury v. Berry, 18 Oh. St., 462.
King v. Barham, 8 B. & C. 103.

Cooley, J. " A law must have the concurrence of the three branches of the legislative department ; and if it differs in an essential particular, when presented to the governor for his signature from the bill passed by the two houses, there is difficulty in saying it has been concurred in by all.

Peo. v. Onandaga, 16 Mich. 257.
Prescott v. Trustees, 19 Ill. 324.
Koehler v. Hill, 60 Ia. 543.
32 N. J. L. 32 ; 10 Nev. 181–2.

In the sixth edition of his text-book (A. D. 1890) Judge Cooley again states this idea, supporting it by numerous authorities, in connection with his discussion as to the effect of the " Journal "—to which citations we will refer infra, when we presently consider that subject.

Cooley's Const. Lims. 162–3.

The relation or relevancy of a section or provision not found in the paper signed by the president to those sections which accompanied it in their passage through Congress, is not a matter for judicial—but wholly for legislative—consideration.

As was the case with the constitution itself, so is it with many bills—particularly those pertaining to tariffs and improvements—that they are carried through by compromises;—or by "log-rolling," if you please. Members vote for a bill containing provisions they do not approve in order that other provisions therein, which they ardently desire, may be enacted; without there being the slightest logical connection, or subject relation, between them.

So common has been this incongruous melange of subjects in one bill, that many recent State constitutions prohibit it.

That great change from the common-law, the admission of parties to testify, first came into life in the Federal Courts through a proviso to the third section of the appropriation act of July 2, 1864.; that section appropriating $100,000 for the detection and punishment of counterfeiters (13 Stats. 351).

Could it be said that the omission of this proviso from the paper signed by the president would have been non-essential?

An Act of Parliament relating to glass and window duties had this proviso;—that "hereafter all acts which mention England shall include Wales and Berwick-on-Tweed." (20 Geo. II, c. 42, § 3.)

At the regular session of 1878-9, the legislative and army appropriation bills were each vetoed by President Hayes, because of "riders" attached thereto, and an extra session was called for March 18, 1879.

The obnoxious paragraph of the Army-Appropriation bill was a four-line provisory amendment to Section 2022 of the Revised Statutes, relating to preservation of the peace at the polls.

Without this short clause this bill would have been acceptable to the executive, and approved.

Suppose it, either by accident or design, to have been omitted from the draft presented to him, and he had signed that draft;—could it have been truly said to have

been *the* bill which, at the end of heated and protracted debate, had passed the two houses of Congress?

Could President Hayes, by erasing or removing these four objectionable lines, and then signing the residue, make the so-mutilated army bill law? Only a negative answer is possible. (Moog vs. Randolph, 77 Ala. 600.) But if the Chief Executive, upon profoundest reason and with purest motives, cannot *deliberately* change the will of Congress, can this be accomplished knowingly or carelessly, accidentally or venally, by any "clerk of a clerk, in all the endless subordination of idleness?" The best-laid schemes may be *defeated* by carelessness; *but no different legislative scheme can, by this means, be made dominant over the people of this country.*

In either of the above mentioned instances could an omission of the indicated clause have been held not to vitiate the law because of the mere incidental, or trifling relation of the omitted sentences to the general purport and residue of the bill? or because the Court might well consider them not germane to the general subject and object of the bill?

If it be a common legislative expedient to attach irrelevant provisions to an important bill, it is certain that no other legislation possesses such a *quid-pro-quo* character as that pertaining to a tariff. In this members swallow a dose, unpalatable to them, sugar-coated with something agreeable to them and their constituents. They take the castor-oil, for the sake of the contingent candy.

Take two instances, sufficiently notorious, connected with the passage of this tariff of 1890:—Had not hides been restored to the Free List (cl. 605), from which they had been taken, the bill could not have passed! Without some yielding in regard to binding-twine, the bill would have failed! Suppose the draft signed by the President to have placed a duty upon hides;—would it have been the bill that Congress passed? either in

law and fact, or in the eyes and consideration of those whose supporting vote in favor of the bill was conditioned upon their free entry? or in the contemplation of the constituency these members represented?

The question of relative magnitude depends upon the point of view. This omitted rebate clause of sect. 30 was of vastly more importance to tobacco manufacturers and dealers, and to those who represented them upon the floor of Congress, than the duty upon hides, or binding twine; or than the admission of colored persons or parties to testify in the federal courts; or the prohibition of soldiery within a specified distance from the polls.

The multitudinous and variant considerations operating upon two or three hundred separately-reflecting minds to induce concurrence in the passage of a bill we do not (and are not concerned to) know; nor how any mind—or all minds—of those making up a majority in either House was affected or controllingly influenced thereto.

All we do know—or ought to care for—is that they, in fact and law, did assent to *that* bill, which passed; and to nothing else.

That assent *would* have been given to a bill, in any respect different from that which passed, is purely hypothetical conjecture, in which we ought not to indulge.

Certainly, no such speculation can be permitted in respect to the omission of a provision, the retention of which one House has expressly made a condition of its assent to the bill, to which condition the other House has agreed; and in regard to a matter which Congress, at a later session, has deemed of sufficient importance to demand its attention and legislative action. (26 Stats. 689.)

What provisions a bill shall contain; their relative importance to each other, or to the main object of the

bill; whether the rejection or omission of any shall promote or prevent the passage of the bill; are all matters of purely legislative determination, to be decided by each House for itself, and by each legislator for himself;—and are, none of them, for judicial consideration.

Whether a bill, sought to be enforced as law against a citizen, constitutionally passed each House of Congress is a judicial question; but it concerns the bill as an entirety. Sections, paragraphs, provisoes, clauses, etc., are examined only to determine the legal identity of the bill, in each House, and as presented to the President. For this purpose of identification, the whole bill, and every item of it, in each House, etc., must be read and examined, but for no other—not to attempt to affix any comparative value to different provisions, for which there is no judicial standard.

V.

Whether or not a bill passed, and (if so) just what that bill contained, as it left each House, is to be ascertained by reference to the Journals, required by the Constitution to be kept for this purpose, and to other proper sources of information.

U. S. Const. Art. I, Sec. 5, Third clause.

The Constitution provides this way for ascertaining these facts.

Unlike several of the State constitutions, it does not contemplate, or require, the signature of the Vice-President, or of the Speaker, to the bills passing the Houses over which these functionaries preside.

These are not certifying officers.

The fact, found at page 5 fol. 11 of the Record, that the recited part of Sec. 30 in the bill which passed Congress was not in the document signed by the President, is accompanied by the legal proposition that this fact is of such a character as to be judicially noticed.

Doubtless, this is legally correct. At all events, the fact is as stated.

Of this fact, the Journals of the two Houses afford ample evidence, and are receivable for this purpose.

Not in an ordinary speech, or platform address, but in a solemn, carefully-drawn protest, intended to go upon the Journal of the Senate, "The Great Expounder of the Constitution" observed;—

"The object of the provision in the Constitution, as we think, most obviously is that the proceedings of the Senate shall be preserved in writing, not for the present only, not until published only, because a copy of the printed Journal is not regular legal evidence; but preserved indefinitely; preserved, as other records are preserved, till destroyed by time or accident.

Everyone must see that matters of the highest importance depend on the permanent preservation of the journals of the two houses. WHAT BUT THE JOURNALS SHOW THAT BILLS HAVE BEEN REGULARLY PASSED INTO LAWS, through the several stages? What but the journals show who are members, or who is President, or Speaker, or Secretary, or Clerk of the body? *What but the journals contain the proof necessary for the justification of those who act under our authority* and who, without the power of producing such proof must stand as trespassers?" . . . "In short, IS THERE, at any time, ANY OTHER REGULAR AND LEGAL PROOF OF ANY ACT DONE by the *Senate than the journal itself?*"

IV Webster's Works, 293-4.

Reference to Benton's Abridgement will show that neither Col. B. nor other supporters of "the Expunging Resolution" (against which this protest was directed) questioned the correctness of Mr. Webster's position; but replied that it was not contemplated the Journal should be obliterated or mutilated—but that its record

would stand;—the expunging resolve being noted upon the margin; the word "expunge" being construed to import moral condemnation, not physical obliteration.

13 Benton Abd.
1 Thirty Yrs. etc. 717–727.

Ex necessitate rei, resort must be had to its Journal to ascertain what each House did, independently of the action of the other branch of Congress. As to each, *its* journal is the record of *its* proceedings.

If not, *why enter the yeas and nays therein?*

It would be absurd to say that the journals are the records and the original evidence of the passage of bills over the president's veto, and not so of those he signs; or that resort could be had to them in one instance, and not in the other.

The Secretary of State is the *statutory* (not by *constitutional* designation or recognition) depository of all laws, whether approved by the president or not.

Act 1874, c. 9, § 2. (18 Stats. 294.)
R. S. Sec. 204.
Act, Sept. 15, 1789, § 2. (1 Stats. 68.)
Act July 7, 1838 (5 *Id.* 302 top) dispensing with recording.

First known to our statute-books as "Secretary for the Department of Foreign Affairs," this custody of the laws was not then devolved upon him. Act July 27, 1789, c. 4. (1 Stats. 28.)

It is a purely arbitrary assignment of this duty.

The duty is to receive that only which has become law. The deposit and reception of anything else does not make the so deposited and received paper law. It is, necessarily, as ineffective as the registration by a recording officer of a forged instrument, or one otherwise not entitled to go upon the record.

The fundamental question of its right to be there must always be open.

There is no middle ground between holding that the

statutory manual acts of delivery and reception, in practical effect, *can* constitute (or supply the place of) congressional legislation, and resort to the constitutionally-kept journals to ascertain what the proceedings in Congress actually were.

"The powers of a legislature are limited and subordinate to the constitution. If a constitutional provision is made upon any given subject, the presumed object and intention, and the legal effect, of such a provision is that the rule on that subject shall be permanent, and not left to be repealed or modified as shall seem proper, according to the fluctuating and changing opinions of successive legislatures."

McKoan v. Davies, 3 Barb. 198.

The act of 1874, c. 9, § 2 (18 Sts. 294) does not purport to make the laws lodged with the Secretary of State—much less the mere fact of their lodgement—evidence of their existence; and so much of the act of Sept. 15, 1789 (1 Sts. 68) as requires him to record them was eliminated by the act of July 7, 1838. (5 *Id.* 302.)

Thus, he is a mere custodian, and not a recording officer.

The first section of the act of 1874 substitutes certification of the revision under the *Department* seal, instead of under the seal of the United States. (18 Sts. 294.)

This departmental seal authenticates something as found in that Department;—not as an act of the government itself.

R. S., sec. 882, declares copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under the seals of such Departments, *admissible* in evidence, equally with the originals.

Notice the succeeding sections, 883 to 896.

Section 906 makes the Little & Brown edition *compe-*

tent evidence of the laws, etc. in any court, without any further authentication.

It could hardly be contended that the typographical work of this eminently respectable firm is to be taken as *conclusively* correct, beyond impeachment.

Yet there is *more* legal ground for such contention, than for assigning such conclusiveness to a paper from the State (or any other) Department.

That department stands, as to certification of papers, upon the same footing as the other departments. (See *supra.*) Treasury transcripts are constantly introduced in evidence, in suits upon official bonds, etc., and are, almost as constantly, impeached by the officer sued and his sureties.

Bruce v. U. S. 17 How. 439.
Soule v. Same, 100 U. S. 11.

It is only as part of the books, papers, etc. *of the department* that they are certified. U. S. v. Pinson, 102 U. S. 554 middle.

That they should have the same probative force as the original is not intended; only that they are "equally" in the same class in the grade of evidence. Manifestly upon a question of phraseology, they would not be as convincing.

Campbell v. Laclede, 119 U. S. 449.

R. S. sec. 883 being the only authority for an authentication by the State Department, as there included with all other departments; and the power there conferred being equally applicable to *every* book, record, paper or document, "in *any* of the executive departments," the copy to be "authenticated by the *department* seal;" it *must* be meant to declare the mere admissibility of such copies, and not their effect.

The effect of making such copies admissible, is to make them substitutes for the originals. No special effect is anywhere attempted to be given to any alleged

originals, because of their being found "in any of the executive departments."

True, the State Department is given the custody of the laws passed in any way, as well as of innumerable other papers, any and all of which it can equally certify; and any document, coming from that custody and purporting upon its face to be a law, would be so considered, if unchallenged; the courts might decline to notice the contrary "unless parties bring the matter to their attention" (94 U. S. 268, quoted in 139 *Id.* 456); but it is only a presumption which is thus raised; and not an estoppel;" "There can be *no* estoppel in the way of ascertaining the existence of a law."

So. Ottawa v. Perkins, 94 U. S. 267.
Duncan, 139 *Id.* 449.

To make a document, or an act, admissible is not to make it conclusive; to make a copy *as* admissible as that from which it is copied gives no additional effect to the original.

As one instance; the laws of Maine make a delivery of liquor "*sufficient*" evidence of a sale of it; but that does not preclude defendant from showing it to have been delivered as a bailment or a gift.

State vs. Hurley, 54 Maine, 562.
52 N. H., 622.

Unless we ascribe to our President the infallibility of the Pope, the mere fact of his name being appended to a paper, having the external appearance of a statute, does not make it unassailable law; and the constitution does not call for any other signing except the conditional one of the President. To impute such virtue to the Executive signature, however it may have been induced, is to override the prerogative of the legislature.

Certainly, the constitution might have prescribed that the draft of a statute approved by the President

and filed in the State Department, should be incontestible; as it did not, and made no provision for any filing, or any State Department, it is doubtful if Congress could so prescribe; at all events, it has never been attempted.

Thus every writing asserted to be law is left open to have that claim contested, although it may be given a prima facie support from the custody and authentication of the document.

"Prima facie evidence is that which suffices for proof of a particular fact until contradicted and overcome by other evidence. For example; the certificate of a recording officer is prima facie evidence of a record; but it may be afterward rejected by proof that there is no such record."

Swamp v. Gwynn, 70 Cal. 570.
Kelly v. Jackson, 6 Pet. 622.

That Congress never attributed finality to the papers it placed in the keeping of the Secretary appears from R. S. Sec. 895, making extracts from their journals, certified by the recording officer of the House from whose journal they were taken, admissible in evidence in the federal courts with "the same force and effect as the originals would have if produced in court and authenticated."

These journals are "of the proceedings" of the respective houses.

These proceedings, as a rule, could have absolutely no effect upon litigants, unless it was claimed, by one party or the other, that they had (as to the subject-matter of litigation) ripened into legislation. Hence, it must, almost necessarily, have been to determine this question that extracts from the journals were made admissible in court. Any other use must be exceptional and occasional, and not the one so obvious as unquestionably to have been in contemplation.

This statute was only passed for convenience; since, without it, the courts would take judicial notice of the

proceedings of Congress, as recorded in its journals; but it negatives the existence of any legislative idea that these were not the primary evidence of congressional proceedings. The decisions of this Court—by the irresistable inference of their reasoning, if not in so many words—indicate that (to refresh judicial memory) resort will be had to the journals and original evidence, in this behalf, to ascertain the truth; and that it will not be shut out by persons, however eminent, outside of Congress going through the performance of mere statutory formalities.

Gardner v. Collr. 6 Wall. 499.
So. Ottowa v. Perkins, 94 U. S. 260.
Walnut v. Wade, 103 *Id.* 689.
Duncan, 139 *Id.* 449.
Post v. Superv. 105 *Id.* 667.

In the first-above-cited federal case (Gardner v. Collr.), arising upon a tariff, this Court came to and announced (6 Wall. 511) a conclusion "on principle" which,—as resulting from deliberation upon the highest considerations and receiving here repeated subsequent recognition,—can hardly be shaken by argument now, nor by any analysis or criticism of authorities referred to in that opinion.

That principle was thus declared:

"That whenever a question arises in a court of law of the existence of a statute . . . the judges who are called upon to decide it have a right to resort to *any* source of information which is in its nature capable of conveying to the judicial mind a clear and satisfactory answer to such question; always seeking first for that which is most appropriate, unless the positive law has enacted a different rule." (6 Wall. 511.)

In the next-cited case (So. Ottowa v. Perkins) although this Court avowedly followed the Illinois Court as to the non-existence of a pretended law of that State, yet the general tendency of the reasoning evinces

approbation of the course pursued by the Illinois Court.

It affirms, generally, that

"There can be *no* estoppel in the way of ascertaining the existence of a law. . . . And whether it be a law, or not a law, is a judicial question, to be settled and determined by the courts and judges. The doctrine of estoppel is totally inadmissible in the case." (94 U. S. 267).

The precise passage by us above-quoted from Judge Miller's Opinion, in the Gardner case, is repeated as stating a correct general principle. (94 U. S. 268–9.)

Evidently, the Journals were considered "the most appropriate" evidence.

So. Ottawa v. Perkins, 94 U. S. 260.
Walnut v. Wade, 103 *Id.* 683.
Post v. Supervisors, 105 *Id.* 669, 670.

The Duncan case (decided at the last term of this court) reproducing the passage we have given from 6 Wall. 511, rests upon the rule stated in 94 U. S. 260, that this Court will follow the State courts as to the existence or non-existence of a state law. (139 U. S. 449.)

Most state courts have taken the same view, and resorted to the Journals, etc. But it must be observed that these decisions are affected by the variant provisions of the several constitutions, and laws made under them.

Unlike the Federal Constitution, some of them require bills which pass their legislatures to be authenticated by the signatures of the presiding officers. Illinois has this provision; yet her courts go behind this authentication to the journals, as the primary and "most appropriate" evidence. (Cases *supra and infra.*)

Most state constitutions expressly provide for a Secretary of State, and his custody of the laws. He is an officer chosen entirely independent of the governor,

and not his mere representative; while the heads of federal departments only voice the will of the President.

Wilcox v. Jackson, 13 Pet. 498.

The cases from that State decided in this court, show how long and firmly established is the principle in Illinois that

"The signatures of the speakers and governor are *presumptive* evidence of the passage of a law," but not conclusive. "The journals may be examined."

Turley v. Logan, 17 Ills. 151.
Spangler v. Jacoby, 14 *Id.* 297.
94 U. S. 260; 103 *Id.* 689.

In one case, the Illinois court held that the retention, in the approved and published statute, of a 'third' section, rejected by the House, *nullified the whole law.*

Prescott v. Trustees, 19 Ills. 326–7.
Wabash v. Hughes, 38 *Id.* 185.

Journals referred to, to determine whether a bill passed, and by what vote, in New York.

Peo. v. Purdy, 2 Hill, 34.
Purdy v. Peo. 4 *Id.* 384.
De Bow v. Peo. 1 Den. 14.
Peo. v. Petrea, 92 N. Y. 139.

The Alabama courts have cited these Illinois and New York cases, in support of the same position assumed there.

Jones v. Hutchinson, 43 Ala. 721.
Moody v. St. 48 *Id.* 115; and
Moog v. Randolph, 77 *Id.* 597, in which the Opinion is drawn by Judge SOMERVILLE, who (as General Appraiser) drew the one against us found in the record, pp. 5 to 8.)

In Stein v. Leeper, 78 Ala. 517, referred to by him, the court from which he had retired did *not* modify its claim to consult the Legislative Journals; but simply

said that the discrepancy of *title there disclosed* was insufficient to nullify the whole law.

The Michigan Court also held the same way, as to the same defect of *title*, while uniformly vindicating the right to determine the existence of a law by consulting the journals. Peo. v. Supr. 16 Mich. 254.

Green v. Graves, 1 Doug. 351.
Southworth v. Palmyra, 2 Gibbs 287.
Peo. v. Mahony, 13 Mich. 481, COOLEY, C. J.
Callaghan v. Shipman, 59 *Id.* 617 top.
Rode v. Phelps, 80 *Id.* 598.
Legg v. Mayor, 42 Md. 221 (6 Wall. 499).
Strauss v. Heiss, 48 Md. 295.
State v. Platt, 2 S. C. (N. S.) 150.
Brewer v. Mayor, 86 Tenn. 732.
State v. Francis, 26 Kans. 731.
McCulloch v. State, 11 Ind. 524.
Coburn v. Dodd, 14 Ind. 348.
Burr v. Ross, 19 Ark. 250.
Miller v. State, 3 Oh. St. 475.
Fordyce v. Goodman, 20 *Id.* 1.
State v. McBride, 4 Mo. 303.
State v. Mead, 71 *Id.* 270.
State v. Deal, 24 Fla. 293.
Southwark v. Com. 26 Pa. St. 450.
Brown v. Nash, 1 Wy. 93.
Osborn v. Staley, 5 W. Va. 89.
Opinion, Judges, 35 N. H. 579; also in 52 *Id.* 622.
Kochler v. Hill, 60 Ia. 553.
Fowler v. Pierce, 2 Cal. 165.
Weill v. Kenfield, 54 *Id.* 111.
San Mateo v. R. R. 8 Sawy. 238; also in 13 Fed. Rep. 966–7.
Berry v. Balto. 41 Md. 463–4; also in 20 Am. Rep. 73.

In this last cited cause, the court sums up its discussion of this subject with a quotation of the final paragraph of the opinion in Gardner v. Collector, 6 Wall. 511, to which it assents (41 Md. 464).

The N. Y. Court of Appeals thus expressed the same idea, eight or nine years ago, holding the journal of the

legislature improperly excluded, when offered to prove a statute, lodged with and published by the Secretary of State, not lawfully enacted ;—

"The tendency of judicial authority supports the proposition, that whenever a question arises as to the constitutionalty of a statute, the court may resort to *any* source of information which is in its nature original evidence of *any* fact relevant to the inquiry." Peo. v. Petrea, 92 N. Y. 139 ;

See 64 How. Pr. 186–7.

These cases start with the premise, that the existence or non-existence of law is a matter judicially noticed.

Not irreverentially, it may be said that judicial cognizance of subjects to which it applies possesses this attribute of Omniscience, that it perceives absolute and ultimate verity, through all forms and show of things.

The Court possesses that highest degree of certainty —which juries seldom attain—actual perception of the fact.

Ingram v. Plaskett, 3 Blackf. 470.

Things judicially known are *perceived*—not *proved*.
Gardner v. Collector, 6 Wall. 508.

Nothing is hidden from judicial view. There is no veil behind which it cannot penetrate. (*Ib.*, 508–9, 511.)

Jones v. U. S. 137 U. S. 216.

Hence, it is said, the existence of a statute is never permitted to be put in issue by the plea *nul tiel* record. (6 Wall. 509.)

Necessarily, however, as to *State* statutes, not infringing the Federal Constitution, the ultimate fact which this Court perceives (as binding upon it) is the determination of that State's highest tribunals, declaring their validity or invalidity. Whatever cognizance it may have of other facts, this knowledge is controlling.

But as to federal legislation, it is uncontrolled in its action upon every fact judicially noticed. (6 Wall. 511.)

A few other States have held with Texas (139 U. S. 458-460) that the paper, signed by the presiding officers of the legislative houses and lodged with the Secretary of State will be conclusively presumed to be law;—so that, in those states, it is legally possible for a citizen to be imperilled and deprived of life, liberty and property under an assumed statute which everybody outside the Court knows, as a fact, never was enacted!

But in those States, generally, the Secretary of State is a constitutional officer, *authenticator* (to coin a word) as well as custodian of the law, and the signature of the presiding officer of each branch of the legislature is required to such bills as have passed his House.

Ex gr., the constitution of Texas provides in Art. II, Sec. 38;—

"The presiding officer of each house shall, *in the presence of the house* over which he presides, sign all bills and joint resolutions passed by the legislature, *after their titles have been publicly read* before signing; and the fact of signing shall be entered on the journals."

Similar Secs. 37 and 38, Art. IV, Mo. Const.

Notwithstanding these provisions of their constitution the highest Court in Missouri has recently emphasized the correctness of the intimation given by it, in Bradley v. West, 60 Mo. 33, that the legislative journals might be received to show that a law had not been passed in conformity with constitutional requirements, adding;—

"The great current of authority is certainly in favor of such evidence for such a purpose, and that the journals may disclose such a state of facts as will warrant a Court in holding the statute void. COOLEY Const. Lims. 135-6. *We have no question this position*

is the correct one." The Court then proceeds to an examination of the legislative journals.

State v. Mead, 71 Mo. 270.

Pangborn v. Young, 32 N. J. L. 29, is sometimes referred to as "the leading case" in support of the position that a hypothesis (perhaps known to be false) should be judicially assumed to be infallibly correct, to the exclusion of the truth.

While persuaded of radical error in the reasoning of this New Jersey case, and of those which follow it, we could admit its entire correctness, without prejudice to the one at bar; for it will be found that Judge BEASLEY bases his conclusion entirely upon the effect of a *record* of statutes kept by the Secretary of State, and exemplified under the great seal of the State, as prescribed by law; and he states (at pp. 35-36) the sole question to be whether the legislature has not the right to decide what shall be the supreme evidence of the authenticity of its own statutes.

He deems this to require an affirmative answer; while we should, as unhesitatingly, return a negative, if the N. J. constitution had, expressly or in effect, prescribed other evidence.

Under the amended constitution of that State, requiring previous notice of the purpose to introduce a private bill, the court held it *could* go behind the secretary's 'record' and "the great seal," to inquire of the legislative Journals and records whether such notice had been given, and declare the law void, if it had not. Asserting Pangborn v. Young to have been correctly decided under the then constitution, it declares the amendment requires other evidence as to private bills.

"The only reason for which it can reasonably be believed that the evidence is perpetuated is that it may be used in a judicial investigation. . . . The preservation of the proof necessarily implies, in law, its

competency and admissibility in courts of justice; as clearly so, to the legal mind, as if it had been so expressed."

Freeholders v. Stevenson, 46 N. J. L. 185.

The mind instantly queries, if this be true of those notices required to be preserved, why is it not equally true of those proceedings of which the constitution requires journals to be kept. This question is anticipated and supposed to be met, (46 N. J. L. 184 bot.) by the assumption that these journals were constitutionally required to be kept and *published* solely for the benefit of the respective houses—that *members* might know what bills are before them and what they are doing!

This seems to us the *reductio ad absurdum!*

If obliged to accede to this, as the true construction of the constitution of New Jersey, surely such is not the meaning and intent of the requirement in the constitution of the United States, which provides for the keeping and *publication* of these journals, excepting such parts as may require secrecy. A bill may be, and is, *printed* for the information and convenience of members; but "to *publish*" is to make known to the people. Publication and secrecy, as opposed to each other, cannot be referred to one who has a right to know and participate in everything that is done.

It cannot be merely for the members' own information that a small minority can have the yeas and nays entered on the journals; or that they must be so entered upon a returned bill.

We mention this obvious misconstruction, because it is merely a different manifestation of that fundamental error upon which all such decisions as Pangborn vs. Young (32 N. J. L. 29) are based; viz. that, in this particular, there is a propriety in following English decisions as to acts of Parliament; a body controlled by no tangible constitution, and which never has been required to keep any journal, and for a long time kept

none. It is of comparatively recent date that reports of its doings could be given to the public, without punishment being inflicted upon the reporter.

Yet every judge who would assign the conclusive effect of law to whatever paper is found docketed as such in a secretary's office, immediately harks back to the reigns of the Stuarts, to find what some appointee of the weak James or wicked Charles is, by Hobart or Keble, reported to have said about recourse to the voluntarily-kept journals of Parliament.

The conclusions reached from these inquiries have been diametrically opposite in different courts.

Such research is proper enough, and may prove profitable, when directed toward subjects upon which our constitutions and statutes are silent; but only evil to our institutions is likely to ensue from an attempt to follow an example from which the framers of our constitution intended to depart. (1 Hare, Am. Const. L. 3.)

Had Parliament always kept a journal, and freely communicated its contents and their proceedings to the English people, it might have happened that no such provision would have been found in our constitution, to require what might have naturally been assumed would be done. But it was because Parliament had not always kept a journal, and never one to which the people (including judges) had an acknowledged *right* to resort, that this was demanded by our constitution.

See the vigorous Opinion of Smith, C. J., in
Green vs. Weller, 32 Miss. 703 6.
1 Hare, Am. Const. L. 3.

It will be found that nearly (if not quite) all of those decisions attributing finality to the Secretary of State's "record" are based upon constitutional provisions creating that officer, and assigning to him that duty; or upon those requiring the signature of each presiding officer to every bill, immediately after it is finally read (so their names certify its passage); or else upon posi-

tive statutes authorizing the Secretary's authentication of the statute-roll, under the seal of the State.

Indiana decisions rest *entirely* upon Art. IV, Secs. 18 and 25, of their Constitution, requiring such attestation of the presiding officers.

Evans v. Brown, 30 Ind. 514.
Edger v. Bd., 70 *Id.* 338.

So do the courts of other States (holding that way) whose constitutions have like provisions.

State v. Swift, 10 Nev. 185.
Green v. Weller, 32 Miss. 684, where the Court were divided, SMITH, C. J., giving the able dissenting opinion before mentioned.

Maine bases it upon the constitutional creation of the Secretary's office, and the legislation relative thereto, under that provision.

Weeks v. Smith, 81 Maine, 546.

A divided Court in Connecticut, and the before-cited New Jersey opinion, rest their conclusion upon the asserted right of the legislature to declare what should constitute the best evidence of their own acts.

Eld v. Graham, 20 Conn. 8.
Pangborn v. Young, 32 N. J. L. 35, 36.

As we have seen, many of the States (Ills. ; Kans. ; Mo. ; Tenn.; Mich.) whose Constitutions require presiding officers to sign the bills which pass their houses, hold these signatures neither vital nor conclusive ; for the reason tersely stated by the Kansas Court, that, to do so, would be to clothe these officers with a greater veto power than is possessed by the Governor or the President.

Connors v. Higginbotham, 17 Kans. 75, 76.

The Mississippi Court recognized the logical conse-

quence of the course it pursued, and declared it could take no judicial notice of the journals. 32 Miss. 684.

Swann v. Buck, 40 *Id.* 296.

The New Jersey and Nevada courts also distinctly declared that, if recourse were had to the journals, and the fact was established that the act which passed was not, in its entirety, that which the executive approved, it must necessarily be a nullity; "neither bill is to be regarded as a legislative act;" *because* a bill is a unit; a single "act" of the legislature. BEASLEY, Ch. J. observed:—

"It is not in the least to be doubted that, on the assumption of the truth of these premises, the conclusion thus drawn is correct. A legislative bill which wanted the approval of either the assembly, or the senate, or that of the governor would be so plainly defective, on constitutional grounds, that this court could not hesitate, in the exercise of its legitimate power, in declaring it absolutely void."

Pangborn v. Young, 32 N. J. L. 32 top.
State v. Swift, 10 Nev. 181–2.

As already noticed, *none* of the grounds upon which these several State courts have held the Secretary's office the *Ultima Thule* of judicial research are applicable to federal laws.

There is no *constitutional* Secretary of State; no signature of presiding officers, constitutionally or by statute, required; no *record* of laws passed, the existence of one being negatived since 1838 (5 Sts. 302); no "great seal" affixed, the act of June 20, 1874, requiring this, to make the revision "legal evidence" being a mistake, corrected by act of Dec. 28 of the same year—early after the reassembling of the same congress. (18 Stats. 113 and 292 top); and *no statute* giving any greater efficacy to the State Department's certification of a statute than to any other paper on file there; or than to the Treasury Department's certificate to its transcripts of accounts.

One other suggestion should be made, as to the procedure in many of the State Legislatures and in Congress, with refereene to enrolled bills; since this has been referred to in one or more of the opinions cited, as precluding recourse to the journals. In most State Legislatures the Committee upon enrolled bills report to the house, and its further action is invoked upon the bill as so reported.

Not so in Congress.

The journals, and the long-experienced Clerk of the House, will refresh the recollection of the Court to this circumstance; that the committee on enrolled bills simply hands the document to the Speaker, who signs it without calling the attention of the House to it at all; and it will be recalled that THE VERY LATEST ACTION OF EITHER BRANCH OF CONGRESS DIRECTLY UPON THIS BILL WAS THE AGREEMENT TO THE REPORT OF THE CONFERENCE COMMITTEE, to the effect *(inter alia)* that this Section 30 should stand as demanded by the house!

We have not immediate access to a copy of the House Rules, etc.; but in the Senate compilation of 1890 we find incorporated "Jefferson's Manual," which says, at page 212:

> "After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into."

Not only is there no federal statute attempting to supersede the Congressional Journals as evidence of its proceedings, but (as already noted) extracts from them are expressly made admissible by R. S. Sec. 895.

Koehler v. Hill, 60 Ia. 553.

The publication of these Journals was constitutionally required, that the *public* might learn the proceedings of their representatives.

A proceeding that did not, or was not intended to, culminate in legislation would be of no *public* interest,

and could only very exceptionally ever concern any individual citizen.

It can hardly be conceived that the general public shall possess information of this character which the courts cannot judicially notice.

Nor can it be that those extracts which R. S. Sec. 895 makes evidence, are to be ignored after being admitted. To declare that evidence *shall* be received which cannot be considered would be an absurdity not to be imagined, or attributed to our legislation.

The New Jersey and Nevada opinions lay stress upon the inconvenience arising from permitting resort to legislative journals. Notoriously, "the world is governed too much;" legislation is too frequent, and far too hasty. Lately revised constitutions are continually imposing new restrictions upon the legislature.

Cooley, Const. Lims. (2d ed.) preface.
Cooley, 18 Am. L. Reg. 684.
Sharswood, Prof. Eth. 22, 23.
Woolsey's Lieber, 161n.

The evil of possible failure of an intended bill is manifestly far less than to have imposed upon citizens as law a bill that was never sanctioned by the legislature; or never sanctioned as it is sought to be enforced.

This evil is thus stated in a recent opinion of the Court of Michigan:—

"This case exemplifies the wisdom of these decisions. If the rule prevailed here which is adopted in some of the States of the Union, that the courts have no power to go behind the authentication of a law by the presiding officers of the Legislature, and the approval of the Governor, to ascertain whether or not it was legally passed, under the requirements of the Constitution, we should always be in danger of having laws upon our statute-books, which, although the courts would be obliged to hold them valid under such a rule, were never passed by the Legislature, and were really created by the carelessness or corruption of some member, clerk,

or employé of that body, or perhaps by the interpolation of a member of what is sometimes facetiously called the 'Third House' but which is nothing more or less than an organized, and generally unscrupulous, lobby. The people speak, in enactment of laws, through the Legislature, acting within the limits of the Constitution; and any holding which would authorize or permit laws, or any part of any law, to be ordained or created in any other way, would be inconsistent with the logic of our free institutions, and dangerous to the safety and security of the liberties of the people. * * * It is to be deeply regretted that as important a law as this, covering a subject of great public interest, should, because of the gross carelessness, or worse, of some one, be wiped bodily from the statute-book. But the courts are not responsible for this; nor can they usurp the functions of legislation, and, by shutting their eyes to the records of legislative doings, declare a law valid that never passed the Legislature, however well authenticated it may be by the certificates of officials."

Rode v. Phelps, 80 Mich., 609, 610.

Impressed with these considerations, the Court of Appeals of N. Y., in 1883, reiterated the same conclusion (92 N. Y. 139) in language hereinbefore quoted (ante, p. 36), and the Maryland Court of Appeals did the same in 1875 and 1876,

Peo. v. Petrea, 92 N. Y. 139.
Berry v. Balto. 41 Md. 463.
Legg v. Mayor, 42 *Id.* 216 to 219,

avowedly following the statement of this Court that

"Whenever a question arises in a court of law of the existence of a statute, the judges who are called upon to decide it, have a right to resort to *any* source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to such question." Gardner v. Collector, 6 Wall. 511.

In another case, the Maryland Court held a tax-law of the State void, because not constitutionally enacted, employing language applicable to the cause at bar.

"We have felt less hesitation in announcing our decision in this case because, although the Act of Assembly under consideration fails to take effect, no serious consequences are likely to ensue to the public. The system of revenue and taxes provided by the act of 1874, C. 483, is in full force and operation; and if a new general assessment shall be deemed expedient the legislature may hereafter provide for it by a law, more carefully framed."

Maxwell v. State, 40 Md. 295–6.
Moog v. Randolph, 77 Ala. 601.

The tariff of 1883, for seven years, answered all the purposes, and met all the requirements, of the government. Fear of disturbing it overthrew one administration, and its repeal by the act of 1890, caused another political revolution; showing the people were satisfied with it.

Should exaggerated pecuniary importance be attributed to the determination of the questions here presented (as is apt to happen whenever the treasury officials know of issues of *any* magnitude being submitted) it may not be amiss to notice that it is only the difference of rate in these two acts, upon a few articles, that is involved. The release of the United States from any obligation to pay bounties must relieve the treasury from disbursing a much larger sum than would be likely to accrue to those importers who have protested upon the ground of the unconstitutionality of this (so-called) act of 1890.

The constitutional questions presented deeply overshadow any question of finance. 7 Kan. 563 top

"There are no evils equal in magnitude to those which may result from violations of the fundamental law."

Peo. v. Briggs, 50 N. Y. 568 top.

VI.

If this bill, confessedly differing from that as to which the two Houses harmonized their disagreements, *can* be deemed to have been approved as enacted, the inquiry then arises whether it is, in other respects, constitutional; in what it contains, regardless of what has been omitted.

Originating as a revenue-bill, it also avows other and extrinsic purposes, domestic and foreign.

Its third section (26 Stats. 612), in substance, permits the exemption, imposition, suspension and reimposition of duties at the will of the President, according to the *pro-tempore* view he may take of the equity and reasonableness of the action of foreign countries, with reference to the introduction therein of the products of our own.

The constitutional objections to this transfer of legislative functions to the executive—delegating to him powers not properly pertaining to his office, nor susceptible of delegation—are so obvious as almost to preclude argument.

Nor can it be necessary to cite authorities or decisions upon this subject; for this assignment of *the taxing power* to the President is a novelty in our legislation.

Many State courts have held similar delegation of legislative authority unconstitutional.

State v. Denny, 118 Ind. 399.
State v. Field, 17 Mo. 531.
State v. Hayes, 61 N. H. 264.
State v. Young, 29 Minn. 474.
Per SOMERVILLE, J. Clarke v. Mobile, 67 Ala. 220.
Brewer v. Brewer, 62 Me. 62.
Farnsworth v. Lisbon, *Ib.* 451.
And. c. Holland, 14 Bush, 153.
St. v. Hudson, 37 N. J. L. 12.
Willis v. Owen, 43 Tex. 41.
St. v. Simons, 32 Minn. 540.

If the question cannot be submitted to the *people*, whether a law shall be operative, *a fortiori*, it cannot be left to any executive officer.

In times of war, or *quasi* war (as at the close of the last and commencement of the present century) power has been conferred upon the President to forbid, restrict or regulate intercourse with hostile or unfriendly peoples; but this, even as a precursor of war (1 Kent Com. 60) was by Judge STORY (a supporter of Jefferson's administration) thought to go to the "utmost limit of *constructive* power under the constitution"—"the extreme verge;" and Jefferson accredits, or discredits, him "alone" with the repeal of the act. (1 Life of Story, 185; IV Jeff. Cor. 148-9); then, and at other times, the President has been allowed to ascertain and promulgate the existence of some *fact* to be followed by prescribed consequences, (7 Cranch, 382) but such is *not* the present case.

He is not to act upon a *fact*, but an *opinion*, *in laying a tax* or duty.

It is not a regulation of commerce, but an exercise of the *taxing* power.

Gibbons vs. Ogden, 9 Wheat., 201-2.

Taxes and revenues are to be increased and diminished —without any reference to the condition of our exchequer, or the requirements of our government—whenever the *locum tenens* of the executive chair personally believes certain foreign legislation (not necessarily hostile, or directed toward us alone) "unequal and *unreasonable!*" And his change of opinion, in this respect, may again abolish the duty, at his pleasure, *without any change in such legislation!*

Is *this* "a government of laws, and not of men?"

Our citizens are to be subjected to tax, forsooth, because *he* thinks some nation across the Atlantic, or in Indian seas, "don't tote fair."

No greater power could despot ever ask, than that

of imposing taxes and raising revenue at the pleasure of his individual will; whenever he deem it "reasonable." Clothed with such authority, he has an equal right with the French monarch to say, "*L'etût; c'est moi!*"

Duties must be uniform throughout the United States; and it is a necessity of commercial undertakings that they also have some stability, and not be made to depend upon the whim of the chance occupant of the executive chair. What he who fills it to-day may think "reasonable" legislation, on the part of another country, his successor may consider so "unequal and unreasonable" as to require the exercise of the power given by this section.

The tea we drink may be subjected to, or exempted from, duty, accordingly as the caprice of the Chinese Emperor may hit the fancy of the President of the United States!

A merchant cannot safely sell tea, or Java coffee, or sugar, "to arrive" when its liability to, or exemption from, duty is made dependent upon the view which the then-president, at or before the time of its arrival, may take of the equality or reasonableness of the legislation of China, Japan and Holland. These objections are stated to show the character of the power to be exercised is legislative, and not executive.

An embargo is a *hostile* act, whether war be actually and formally declared or not. It is defined as "The temporary or permanent *sequestration of the property* of individuals for the benefit of the government."

1 Rap. & Lawr. L. D. 438; Man. Int. L. 143.
Rhodacanchi v. Elliott, L. R. 8 C. P. 659.
Wm. King, 2 Wheat. *153.
McBride v. Ins. Co. 5 Johns. 308.
Deland v. Bedford, 10 Mass. 352 top.
Ins. Co. v. Jones, 2 Binn. 564, 565.
1 Abb. L. D. 421; 1 Bouv. 522.

Yet, only in a single instance, for a short, limited, period, did Congress give the President authority to lay an embargo; all subsequent to that were peremptorily laid by Congress.

This section confers its extraordinary power upon any incumbent of the executive chair, though he may not have come there by election, but by devolution under the act of Jan. 19, 1886 (24 Sts. 1) and be a Secretary comparatively unknown; or (it may be) venal as Washington's Secretary of State.

The imposition of duties is not under the war-powers of the constitution, *nor under the power to regulate commerce* (as we have already noted) but *under the power to lay taxes* only.

Gibbons v. Ogden, 9 Wh. *198–*203.
Pass. Cases, 7 How. 479, 480.
Federalist, No. XXXIII.
Transp. Co. v. Wheeling, 99 U. S. 285.

The taxing power, the exercise of which must originate in the House of Representatives, is one not in its nature susceptible of delegation. If an individual cannot delegate a delegated power, certainly a legislature can not.

This third section will not be here further discussed, because we feel the court must find this bill never passed; therefore, minute consideration of its several provisions will not become necessary.

Naturally, it will be far more agreeable to the court to vindicate the privileges of Congress, by holding this *eidolon* of a statute null and void, for want of congressional assent, rather that to declare that the legislature impotently willed and attempted to transcend the limitations of the Constitution.

If this third section is subjected to the condemnation of the court, it will be found so inwoven with the structure of the statute, in a common design, as to bring down the whole Act with it.

VII.

Application of the principles and decisions of this Court to the provisions found in paragraphs 231 to 236 of Schedule E of this act, giving a bounty to the producers of native sugar, manifest their unconstitutionality. Certainly, there is no more constitutional authority for paying men to tap a maple and boil its sap, or to raise cane, then there is to raise hay, potatoes, corn or cabbage. If the taxes constituting the funds in the national treasury can be collected and disbursed to compensate a man for making sugar, they can be for making brick or any other manufacture. There can be, in such case, no limit to the extent to which moneys raised by taxation can be appropriated to the individual benefit of preferred citizens, and in the encouragement of their private enterprises and to their personal gain.

The leading case, which naturally occurs to every legal mind, when this topic is discussed is Loan Assn. v. Topeka, 20 Wall. 655 to 667.

Judge MILLER says (p. 662) that it is universally conceded that where the purpose of the tax is not a public use, but purely in aid of private or personal objects the statute is unauthorized.

He emphatically declares:

"To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms.

Nor is it taxation."

"COULTER, J., in *No. Lib. v. St. John*, 13 Pa. St. 104, says, very forcibly, "I think the common mind has everywhere taken in the understanding that taxes are a public imposition, levied by authority of the government for the purpose of carrying on the government in

all its machinery and operations—that they are imposed for a public purpose."

We have established, we think, beyond cavil that there can be no lawful tax which is not laid for *a public purpose*. (italicized in original.)

Loan Assn. v. Topeka, 20 Wall. 664.
At same Term, B'k. v. Iola.

The object to which Topeka wished to apply the money was to encourage the manufacture of iron there, by aiding the establishment of the works necessary for that purpose.

Held, in another case, that aid could not be furnished a railroad company for *this* purpose.

Jarrett v. Moberly, 5 Dill. 255; 103 U. S. 580.
U. S. v. N. O. 98 U. S. 393–4.
Rallo v. U. S. 105 *Id.* 736.
Parkersb. v. Brown, 106 *Id.* 487.
Cole v. La Grange, 113 *Id.* 1.

Wherever State Courts have had occasion to pass upon this question, it has been answered in the same way.

That taxes could be laid for the public defense and education, and to support the destitute, was declared to furnish

"No precedent for going further, and furnishing to any beggar, however wealthy, influential or clamorous (and these are they whose application is likely to be successful) out of the public treasury the means of trying some pet scheme for adding to his own gains at the public risk." 58 Me. 611.

See Ops. 58 Me. 591–8; 603–614.

In a case subsequently decided in the same State, cited in 20 Wall, that Court said, of legislation of this general character:

"It is a discrimination in favor of the particular individual, and *a particular industry*, thereby aided, and is

one adverse to and against all individuals and all industries not thus aided.

Allen v. Jay, 60 Me., 133; 12 Am. L. Reg. (N. S.) 493.
Hooper v. Emery, 14 Me., 378.

In another case is this further quotation from this opinion in the Jay case;—

"*Our government is based on an equality of right, the State cannot discriminate among occupations, for a discrimination in favor of one is a discrimation against all others*, etc.

Brewer v. Brewer, 62 Me. 68 top.
Farnsworth v. Lisbon, *Ib.* 451.
Ohio v. Moundsville, 11 W. Va. 13.
Trs. v. George, 14 *Id.* 422–3.
Cons. Co. v. Cent. Pac. 51 Cal. 272.
Curtis v. Whipple, 24 Wis. 350.
Bissell v. Kankakee, 64 Ills. 248.
Hanson v. Vernon, 27 *Ia.* 47,

where Judge DILLON italicizes the proposition that "*Taxes are burdens imposed by the Legislature upon persons or property to raise money for public purposes, or to accomplish some governmental end.*"

Weismar v. Douglass, 64 N. Y. 104–5.

The Kansas Court held (Per BREWER, J.) of an act for relief of those farmers who suffered by drought in 1874;—

"This legislation must be construed in the light of known facts. . . . *It contemplates a class who have fields to till* and stock to care for, and purposes to help them with seed for their fields and grain for their stock, *that thus they may pursue with better prospect of success their ordinary avocations.* IT TAXES A WHOLE COMMUNITY TO ASSIST ONE CLASS, and that not for the purpose of relieving actual want, but *to assist them in their regular occupation.*"

State v. Osawkee, 14 Kans. 423. St. v. Nemeha, 7 Kans 562-3
McConnell v. Hamm, 16 *Id.* 228.
State v. Foley, 30 Minn. 356.

And in 1887, when Congress passed "An Act to enable the Commissioner of Agriculture to make a special distribution of seeds in the drought-stricken counties of Texas, and making an appropriation therefor," the then President vetoed it, assigning as a reason:

"I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the general Government ought to be extended to the relief of individual suffering, which is in no manner properly related to the public service or benefit. A prevalent tendency to disregard the limited mission of this power and duty should, I think, be steadfastly resisted, to the end that the lesson should be constantly enforced that, though the people support the Government, the Government should not support the people."—Message of the President, February 16th, 1887.

For like reasons, the Mass. stat. of 1872, c. 364, authorizing Boston to sell bonds and loan proceeds, on ample real-estate security, to those whose buildings had been burned in the great fire of 1871, in that city, was unanimously held unconstitutional.

Messrs. B. R. Curtis and J. G. Abbott argued in support of the law, claiming that "The primary object of the statute is not to aid and benefit private persons. Its purpose and end are strictly of a public nature," etc.

This argument was thus responded to by the Court;—

"To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public service or some object which concerns the public welfare. The promotion of the interests of individuals, either in respect of property or business, although it may result *incidentally* in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of private enter-

prises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary. It is the essential character of the *direct* object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.

The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than upon force."

Lowell v. Boston, 111 Mass. 461.
Jenkins v. Andover, 103 *Id.* 102.
Freeland v. Hastings, 10 Allen, 588–9.
Louv. v. Davidson, 1 Sneed, 663.
Peo. v. Salem, 20 Mich. 474.

The reasoning upon which these decisions rest is precisely that of Hamilton, in the thirty-third number of the Federalist;—

"The propriety of a law, in a constitutional light must always be determined by *the nature of the powers upon which it is founded.* (Fed. No. XXXIII.)

"Law," says Judge SHARSWOOD, "is a severe and necessary deduction *from the relation of things.*" Polit. Ethics, 11.

U. S. v. Fox, 95 U. S. 672.
Tenn. v. Davis, 100 *Id.* 260.

The relation between the government and the citizen, *as a tax-payer*, is that the latter's property is, *pro tanto*, taken for the *direct* support of the former—not for the benefit of any fellow-citizens individually.

Pray v. No. Lib. 31 Pa. St. 71.
Sharpless v. Mayor, 21 *Id.* 168.
Re Mayor, 11 Johns. *80.
Camden v. Allen, 26 N. J. L. 398.
Hanson v. Vernon, 27 Ia. 47 top.
Wynehamer v. Peo. 13 N. Y. 417.

If States cannot accomplish ends like that sought by this third section, *a fortiori*, the national government cannot:—for the former can do *anything* which the constitution (and natural right) do not forbid; the latter can do nothing which its constitution does not first sanction.

Calder v. Bull, 3 Dall. 387.
1 Story Const. § 909.
U. S. v. Cruikshank, 92 U. S. 549, 550.

In § 911 of his work on the Constitution, Judge Story says a tax not laid for payment of a public debt, the *common* defense, or *general* welfare is void.

1 Story on Const. §§ 908 *et seq.*

"Legislation for classes violates this plain rule of equal justice, and moreover does not, in the long run, benefit those for whom it is intended. The indirect evils upon society at large are even more injurious than those which are direct." . . .

"What government owes to society, and *all* it owes, is the impartial administration of equal and just laws. This produces security of life, of liberty, and of property. It has become a favorite maxim, that it is the duty of government to promote the happiness of the people. The phrase may be interpreted so as to mean well, but it is a very inaccurate and unhappy one. It is the inalienable right of men to pursue their *own* happiness; each man under such restraints of law as will leave every other man equally free to do the same. The true and *only* true object of government is to secure this right. The happiness of the people is the happiness of the individuals who compose the mass. Speaking now with reference to those objects only, which human laws can reach and influence, he is the happy man who sees his condition in life constantly and gradually, though it may be slowly, improving. Let government keep its hands off—do nothing in the way of creating the subject-matter of speculation—and things naturally fall into this channel." . . .

"Property has an especial claim to protection against the government itself. The power of taxation in the legislature is in fact a part of the *eminent domain*: a

power that must necessarily be reposed in the discretion of every government to furnish the means of its own existence. One grievous invasion of property—and of course ultimately of labor, from whose accumulations all property grows—is by government itself, in the shape of taxation for objects not necessary for the common defense and general welfare. Men have a right not only to be well governed, but to be cheaply governed—as cheaply as is consistent with the due maintenance of that security, for which society was formed and government instituted. This, the sole legitimate end and object of law, is never to be lost sight of—security to men in the free enjoyment and development of their capacities for happiness—*security—nothing less* —but *nothing more*. To compel men to contribute of the earnings or accumulations of industry, their own or inherited, to objects beyond this, not within the legitimate sphere of legislation, to appropriate the money in the public treasury to such objects, is a perversion and abuse of the powers of government, little if anything short of *legalized robbery*."

Sharswood, Leg. Eth. XIX to XXII.

It will be noted that many cases, beside those above cited, treat such legislation as void because a *violation of natural right*, independently of constitutions; and many opinions of this Court, and other of the highest authorities, declare any law void which does this.

Calder v. Bull, 3 Dall. 388.
Wilkinson v. Leland, 2 Pet. 657.
Osborn v. Nicholson, 13 Wall. 662, bot.
Gunn v. Barry, 15 *Id.* 623, top.

MILLER, J., speaks of limitations, additional to those of a constitution, imposed " by the general principles supposed to limit *all* legislative power."

Bartmeyer v. Iowa, 18 Wall. 132, mid.

See also;

Merrill v. Sherburne, 1 N. H. 213.
Campbell v. State, 11 Ga. 353.
Peo. v. Hurlbert, 24 Mich. 107 etc.
Powers v. Bergen, 6 N. Y. 366-7.

Peo. v. Superv., 4 Barb. 74.
Benson v. Mayor, 10 *Id.*, 223.
Peo. v. Edmonds, 15 Id. 534.
Lee v. State, 26 Ark. 265, etc.
Hatch v. State, 25 Vt. 49.
R. R. v. Davis, 2 Dev. & B. 451.
Palairet's Ap. 67 Pa. St. 485.
Goshen v. Stonington, 4 Conn, 225.
1 Bla. Com. 124.
2 Webst. Works, 392.
2 Story's Life, 278.

VIII.

The connection of parts in this statute is such, that the avoidance of any material provision which received executive approval must nullify the whole.

It is a substitute for Title XXXIII of the Revised Statutes, as the act of 1883 (expressly so declared—22 Sts. 488) is wholly superseded thereby.

It constitutes one connected system, arranged with relation to its several parts; constituting a statutory embodiment of what is known in English legislative parlance as the chancellor's budget;—or the result of an examination made to determine the amount of estimated revenues needed to meet estimated requirements.

There is a mutual relation and inter-dependence between the duties upon woolen goods and upon wool; between the bounty upon domestic sugar and the placing of foreign upon the free list, and the latter's conditional subjection to duty, at the will of the President.

Everybody knows, and the Court must perceive from the face of the statute, that no sugar would have been made free but for this bounty clause.

To pay this bounty, all sugar of the grades actually imported being free, increased duty was necessarily placed upon other articles. To annul this clause alone, would be to perpetuate burdensome and excessive duties, after reason and necessity for their imposition had ceased to exist.

It would be *assuming* that Congress would have freed sugar, and laid duties upon other articles, precisely the same without this necessity for raising funds, as with it; thus, contrary to the principle often avowed, imposing taxes upon a doubtful assumption.

Hartranft v. Wiegmann, 121 U. S. 616.

A comparatively recent opinion of the Minnesota court, commencing with the citation of 30 Minn. 350 and Sharpless case, 21 Pa. St. 169, in support of the statement that "There is no principle of constitutional law better settled than that taxes cannot be imposed for a private purpose"—even though there may be intermingled therewith some avowal of a public benefit or use as contemplated—concludes thus:—

It may be stated that when the purposes for which taxes are imposed are partly private and partly public, the act must wholly fail; unless, *perhaps*, where the part to be raised for the private purpose can be distinguished and severed from the other."

Coates v. Campbell, 37 Minn. 501.

In an already-cited Kansas opinion, BREWER, J. observes that "*all* the purposes must be public."

St. v. Osawkee, 14 Kans. 420 bot.

"When parts of a statute are so materially connected and dependent upon one another as to justify a belief that the legislature intended them as as a whole; and there is absence of good reason for the belief that the legislature intended, if part was incapable of taking effect, the residue should be preserved, the whole statute must fail.

Vines v. State, 67 Ala. 76.

Huntington v. Worthen, 120 U. S. 102.
U. S. v. Reese, 92 *Id.* 221.
U. S. v. Fox, 95 *Id.* 672–3.
Trade-mark cases, 100 *Id.* 98.
Allen v. La. 103 *Id.* 85 mid.
Va. coups. 114 *Id.* 304 et seq.,

where this court declared the attempt to segregate the connected system of a tax-law "would be to substitute for the law intended by the legislature one they *may* never have been willing by itself to enact." (*Ib.* 305 top.)

This was premised by the observation that the partial validation of an act would only be made

"where the parts are so distinctly separable that each can stand alone, and where the court is able to see, and to declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail." (*Ib.*)

The opinion then quotes from 100 U. S. 99,

"if we should in the case before us undertake to make by judicial construction, a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do;" (*Ib.*)

concluding with an examination to show the law to be one connected system (114 U. S. 305–6) "parts of a larger whole."

Spraigue v. Thompson, 118 *Id.* 95.

"A single financial scheme." Newell v. Peo. 7 N. Y. 107.

The question is not whether the provisions are grammatically connected, found in same or different sections, but are they so "in substance"—as parts of a system, or interdependent.

Com. vs. Hitchings, 5 Gray, 486 top.

In another Mass. case, a statute was considered which extended to the police-courts jurisdiction over "*all* larcenies," and in another clause, allowed the

same punishment to be awarded as in courts having juries.

"We think, therefore, that the two parts of this enactment were not separated and independent of each other, but the one *may* have been the motive, inducement or consideration on which the other was founded, and that they must stand or fall together."

Jones v. Robbins, 8 Gray, 339.
Ex p. Nolan, 122 Mass. 332–3.
Com. v. Howegan, 127 *Id.* 451–2.
St. v. Perry, 5 Ohio St. 506–7.
Campan v. Detroit, 14 Mich. 285.
Mershmeier v. St. 11 Ind. 486–7.
Wash'n v. St. 13 Ark. 763.
Easton v. St. 11 *Id.* 502.
St. v. Chamberlin, 37 N. J. L. 393.
Oatman v. Bond, 15 Wis. 28, 29.
Slauson v. Racine, 13 *Id.* 404.
St. v. Dousman, 28 Wis. 547.
Reed v. Omnibus, 33 Cal. 219.
Com. v. Potts, 79 Pa. St. 168.
Obrien v. Kreutz, 36 Min. 139, 140.
Echart v. St. 5 W. Va. 518.
Meyer v. Borlandi, 39 Min. 447.
Westn. v. St. 62 Tex. 634–6.
St. v. Pugh, 43 Ohio, 124.
Monroe v. Collins, 17 Oh. St. 684.

The above cited cases from Massachusetts, several of them, refer to this statement of the law in that behalf by Chief-Justice SHAW;—

But this must be taken with this limitation, that the parts, so held respectively constitutional and unconstitutional, must be *wholly independent* of each other. But if they are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to *warrant* a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.

Warren v. Mayor, 2 Gray, 99.

The numerous cases above mentioned are not cited to support this well-known principle, but as instances of its application;—in the majority of them to revenue laws.

How can it possibly be contended that the omitted paragraph and provision did not intimately and correlatively attach itself to the three-and-a-half lines that are printed as Sec. 30 of the approved bill? How can these few lines be law without the associated clauses, intended as a compensation to those otherwise injuriously affected thereby.

And how can any other part of this bill be law, if these few lines,—containing perfectly legitimate legislation, and going through precisely the same process the other sections did—are not?

The principle the foregoing citations illustrate is not confined to mere statutory construction. Because founded in reason, it is of general applicability. A will is wholly void if the main and controlling purpose for which it directs an accumulation fails.

Here, funds are, by the duties imposed, to be accumulated in the treasury to pay the prescribed bounties. To enforce these rates of duty, after the object for which they are laid has been frustrated, would be to compel the payment of a draft of which the consideration has failed.

"The appropriation in this case is to be taken in connection with the promise to pay contained in the certificates, and the scheme of raising money in which they form part of the machinery."

Newell v. Peo. 7 N. Y. 105.

IX.

In conclusion we recapitulate and submit to have demonstrated:

That the alleged act as it was presented to the President, according to constitutional requirement, for his action had never passed both Houses of Congress. This is not only found as a fact by the record, but it is a fact abundantly appearing in the records of which this Court is bound to take judicial cognizance.

The assumed act is also void because:

1. The delegation to the President of authority to impose or remit taxes according to his judgment of the purpose and effect of the legislation of foreign countries is beyond the power of Congress.

2. The appropriation of money for and direction to the Secretary of the Treasury to pay a bounty for the production of sugar is without constitutional authority.

No express warrant is found therefor in the Constitution.

An implied power growing out of the powers granted Congress is not apparent.

It is so contrary to principles of universal jurisprudence that this Court ought not to sustain it.

3. The act is a connected whole, and, as has been argued, each of these provisions is so interwoven with the whole act that they cannot be picked out and held to be unconstitutional, and the remainder of the act validated.

To do so would be for this Court to enact a law which Congress never passed and probably never would have passed.

As to the sugar bounty, we may add that the Court cannot judicially know, and no man living can tell, whether in the end every dollar received from the proposed taxation will not be required to pay the proposed bounties—a flagrant robbing of Peter to endow Paul.

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THE TARIFF ACT CASES.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

BOYD, SUTTON & CO., APPELLANTS,
vs.
THE UNITED STATES. } No. 1049.

H. HERRMAN STERNBACH & CO., APPELLANTS,
vs.
THE UNITED STATES. } No. 1050.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MARSHALL FIELD & CO., APPELLANTS,
vs.
THE UNITED STATES. } No. 1052.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

W. H. H. MILLER,
Attorney-General.
WM. H. TAFT,
Solicitor-General.

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STATEMENT OF THE CASES.

These are suits by importers against the United States to obtain a refund of duties claimed to have been illegally

exacted on imported merchandise. In Boyd, Sutton & Co.'s case, the importation was of silk and cotton laces; in Herrmann, Sternbach & Co.'s case, of colored cotton cloths; and in Marshall Field & Co.'s case, of woolen dress goods, woolen wearing apparel, and silk embroideries.

The importations were made on the 6th, 7th, and 13th of October, 1890.

The articles were assessed and duties were collected under the first section of the tariff act of October 1, 1890. The importers protested on the ground that the assessment and collection should have been at the lower rates fixed for such merchandise under the tariff act of March 3, 1883. The only issue to be considered is whether that which purports to be an act of Congress entitled "An act to reduce the revenue and to equalize the duties on imports, and for other purposes," approved October 1, 1890, and printed on pages 567–625 of the 26th volume of the United States Statutes at Large, had the force of law when the importations in question were made.

The suits were begun and brought to this court under sections 14 and 15 of the customs administrative act of May 10, 1890. After due protest and appeal, the cases were submitted to the Board of General Appraisers, which sustained the action of the collector. An appeal was then taken to the circuit court from the decision of the Board and its conclusion was affirmed by Judge Lacombe, in New York, and by Judge Blodgett, in Chicago. The Board, in its return to the circuit court in the New York cases, adopted the statement of fact made by Judge

Somerville, general appraiser, in deciding the appeal of Marshall Field & Co. It was as follows:

> The proceedings of Congress, of which we are required to take judicial notice, bear out the fact that the bill which passed both the House of Representatives and the Senate contained the following clause as part of section 30:
>
> SEC. 30. "That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction, and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5."
>
> "It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations, and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the Treasury not otherwise appropriated."
>
> The Senate opposed this clause of the law, and receded from their opposition only after a conference was ordered.
>
> In engrossing the bill the clause in question was omitted apparently by clerical error, and the President signed the engrossed bill in its defective condition. (Record No. 1049, page 9.)

Further evidence was taken in the Marshall Field & Co. case under a stipulation (Record 1052, page 23). A finding of fact of the same tenor as the foregoing was made and entered therein by Judge Blodgett.

CONTENTION OF APPELLANTS.

The position of the appellants may be stated in the words of the protest of Boyd, Sutton & Co. (No. 1049, Record, p. 7) as follows:

> We claim that the said act of March 3, 1883, is still in force and unrepealed for the following reasons, to wit:
>
> * * * * *
>
> Fourth. Because said bill [*i. e.*, the tariff bill of 1890], as passed by the House of Representatives and the Senate, contained a certain section providing for a rebate of internal taxes on manufactured tobacco and snuff which was not contained in the engrossed copy of said bill presented to the President and approved by him.
>
> Fifth. Because the first five paragraphs of Schedule E, section 1, of said so-called act, providing for bounties to producers of American sugar (paragraphs 231 to 235), are unconstitutional and void, no power to enact legislation of this character having been vested in Congress by the Constitution.
>
> Sixth. Because section 3 of said so-called act is unconstitutional and void, in that it delegates to the President the power of laying taxes and duties, which power, by sections 1 and 8 of article 1 of the Constitution, is vested in Congress.

SYNOPSIS OF ARGUMENT.

A.

Concerning the passage of the act.

1. The tariff law of October 1, 1890, was enrolled, was signed by the presiding officers of both Houses of Congress, was approved by the President, and was deposited with the Secretary of State, in whose office, thus authenticated, it is carefully preserved, in obedience to express statutory injunction. This is the ultimate and complete record of the proper and constitutional passage of the law as therein contained, is the most appropriate evidence of which the court may take judicial notice in considering the existence and contents of the law, and, if complete and regular, is not impeached by entries upon the legislative journals or other evidence inconsistent therewith.

2. Even if the enrolled act is but *prima facie* evidence of its existence and contents, there is no other record by which it may be impeached, except the journals of the two Houses, and in the case at bar the journals do not show any discrepancy between the bill as it passed the two Houses and the bill as it was approved. The evidence tending to show such discrepancy, relied on by appellants, is in parol, and can not therefore be considered by the court.

3. Conceding, however, that the tobacco rebate section was omitted from the bill after its passage and before its approval by the President, as is claimed by the appellants,

this fact would not render invalid the remainder of the bill, which did pass both Houses and was approved by the President, for the reason that the rebate section and the approved bill were separable and independent of each other.

B.

Concerning the sugar bounty and reciprocity clauses of the tariff act.

1. The sugar bounty and reciprocity clauses, even if invalid, have no connection with or dependence upon the paragraphs of the tariff act imposing the duties of which complaint is made in the cases at bar, and can not, therefore, affect their validity.

2. The bounty clause is within the power of Congress, under the general welfare clause of the Constitution.

3. The reciprocity clause is constitutional. It is not a delegation of legislative power to the President, but is only a legislative direction by which an alternative provision of existing law is made applicable on the happening of a fact the existence of which is to be determined by the President.

ARGUMENT.

A.

CONCERNING THE PASSAGE OF THE ACT.

1.

The tariff act, approved October 1, 1890 (26 Stat., p. 567), was printed from the enrolled act deposited in the office of the Secretary of State. The signatures and other marks of authentication are omitted in the printed volume. We have personally examined the original act, and have included in a separate appendix a copy of the same just as it now appears in the State Department, certified to by the Acting Secretary of State. (See separate Appendix, p. 75.) The act is signed by Thomas B. Reed, Speaker of the House of Representatives; by Levi P. Morton, Vice President of the United States and President of the Senate; approved by Benjamin Harrison, President of the United States, October 1, 1890; bears upon its face the stamp of the State Department—received October 1, 1890—and is indorsed "I certify that this bill originated in the House of Representatives. Attest: Edward McPherson, Clerk."

Section 204, Revised Statutes, as amended by the act approved December 28, 1874 (18 Stat., 294), is as follows:

> Whenever a bill, order, resolution, or vote of the Senate and House of Representatives, having been approved by the President, or not having been returned by him with his objections becomes a law or takes effect, it shall forthwith be received by the Sec-

> retary of State from the President; and whenever a bill, order, resolution, or vote is returned by the President with his objections, and, on being reconsidered, is agreed to be passed, and is approved by two-thirds of both Houses of Congress, and thereby becomes a law or takes effect, it shall be received by the Secretary of State from the President of the Senate or Speaker of the House of Representatives, in whichsoever House it shall last have been so approved, and he shall carefully preserve the originals.

By sections 210, 3803, 3805, and 3807, R. S., the Secretary of State is required to furnish to the Congressional Printer correct copies of the enrolled acts as soon as they are approved or become the law without approval, and the Congressional Printer is required to print the same under the supervision of the Secretary of State, who is to furnish bound copies of all the laws of the session to the Senate and House of Representatives.

The second clause of Section 7 of Article 1 of the Constitution provides that—

> Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated.

Neither the Constitution nor any statute requires the presiding officer of either House to authenticate by his signature, bills which have passed. The custom has prevailed, however, since the foundation of the Government. An express requirement for such signatures is contained in the constitutions of more than one half the States of the

Union. It was the custom in the colonial legislatures. (See *Pangborn* vs. *Young*, 32 N. J. Law, 33.) In England a bill introduced in the House of Commons, which passed, was indorsed *Soit bail aux seigniors* ("Let it be delivered to the lords"); when it passed the House of Lords it was indorsed *Soit bail al roy* ("Let it be delivered to the king"), and when it received the royal assent it was indorsed *Le roy le vult* ("The king wills it"). (See argument of Attorney-General Jones in *College of Physicians* vs. *Cooper or Hubert*, 3 Keble's Repts., 587.)

The indorsements were regarded as authentications of the bill which bore them. In this new country the ancient forms were dispensed with and the signatures of the presiding officers were substituted. The rules and practice of the House of Representatives and of the Senate require that their presiding officers shall sign all acts. (See Smith's Rules and Practice of the House of Representatives, page 237, and rule 25 of the standing rules of the Senate.)

It may be properly said, in view of the foregoing, that the signatures of the presiding officers, the signed approval of the President, and the depositing of the enrolled act with the Secretary of State are the forms provided by the Constitution and by Congress itself for the authentication of laws, and constitute the proper record of Congressional action in the enactment of statutes.

It will be conceded on every hand that this record, proving itself, as the record of a court proves itself (*teste meipso*), is appropriate evidence of the existence of the law as enrolled. The contention on behalf of the appellants is

that though it is evidence, it is only *prima facie*, and may be impeached. Our contention is that when this record is complete it is the most appropriate evidence to which courts can refer, and therefore that there is no other evidence of sufficient weight to contradict or impeach it. The inquiry suggests itself, in view of the issue between us, whether there is any other record of the existence and contents of a law of which the courts may take judicial notice, equally appropriate and of equal verity.

Section 5, clause 3, Article I, of the Constitution is as follows:

> Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

There is no other record than the journals, which purports to be evidence of Congressional proceedings. If we can show that these should not be used to impeach the enrolled act it will necessarily follow that no other evidence can be used for that purpose.

The Constitution requires the journals to be kept, and to be published. It will be argued with force that this injunction gives to them high authority. For many reasons, however, its purpose could not have been to authenticate the enactment of laws. The proceedings of Congress were patterned after those of Parliament. It had been found necessary in Parliament to have a journal for each house, to keep it informed of the condition of the

business before it. In later years the journals came to be useful in showing to the public at large, to whom the members of each house were responsible, the part taken by each member in the business of the country. Lord Hobart says in *King* vs. *Arundel* (Hobart, 111):

> The journal is of good use for the observation of the generalty and materialty of proceedings and deliberation as to the three readings of any bill, the intercourses between the two houses, and the like; but when the act is passed, the journal is expired.

This is the English view, and there is no authority in that country to the contrary. It is reasonable to suppose that the framers of the Federal Constitution, with English precedents before them, in requiring a journal to be kept, had a similar purpose in mind. It was said in *Passaic Freeholders* vs. *Stevenson* (46 N. J. Law, 184):

> Without such journals it would be impossible for legislators to know the situation of the vast number of bills before them. The inference, therefore, to be drawn from the injunction to keep a journal is that it is intended for the information of the legislative body alone, and not for the perpetuation of testimony to be used in judicial investigation.

If it was intended by the journal to provide a record of enacted laws, there would have been some direction as to what it must contain. With respect to laws which are approved by the President the only direction is that on the demand of one-fifth of the members present the ayes and noes on any question shall be entered on the journal. This was evidently inserted to enable one-fifth of the members to secure accuracy in the count of the votes, and to make public the names of the supporters

and the opponents of any measure or motion. Had a record of laws been intended, the option would not have been given to one-fifth of the members to make it or omit it.

With the exception noted, the character of the journal and the detail with which the entries are to be made, are wholly within the discretion of the House and of the clerk in whose charge the journal is. It is an invariable practice in Congress and other legislative assemblies, including the British Parliament, to refer to bills introduced and passed by their titles only, and not to spread the body of the bills upon the journals. But for the weight of authority sustaining it, we should be tempted to say that it was absurd for a court to consider the journals as a record of the highest authenticity and weight in respect to the validity of laws the terms of which they do not generally contain. And yet it is for the purpose of disputing the contents of a bill that appellants propose to use the journals in this case.

It is within the discretion of the clerk to give or not to give the language or purport of the amendments proposed, as they may or may not seem important. The journal is made up in the hurry and confusion of public business. It is true that the House itself may correct it, and the ordinary practice in parliamentary bodies is to have the journal of the last meeting read at the beginning of the next, but such reading may be dispensed with by unanimous consent, and where business presses and time is limited, this is often done. The accuracy and fullness of the journal is thus left to depend upon the memory, notes, and discretion of the clerk alone.

The value of such a record as trustworthy evidence depends upon its completeness, the regularity with which it is kept, and the obligation of the record-keeper to note all acts of a similar character. It is contrary to the ordinary rules governing the legal consideration of evidence that minutes, in the making of which there is so little sanction of accuracy and certainty as in that of the journals, should be given greater weight and credibility than the solemn record of the enrolled act. Yet this is the result if the journal may be used to impeach that record, for it must then follow that the journal is of the higher authority.

It is argued that to make the enrolled act the best evidence of its existence and contents is to give to the clerks of the two legislative houses the power to enroll, as an act of Congress, that which has not received the constitutional approval of the two houses. Little security is offered by the journals against changes in the enrollment of an act which has passed, because, as has been said, the journals do not generally contain the terms of the bills. The examination by the Joint Committee on Enrollment, and the presiding officers, and the publicity which generally attends the passage or rejection of a bill in Congress, renders the enrollment of a bill which has not passed in some form, impossible. The presiding officers of both houses have the advantage of their respective journals to assist them in checking mistakes in enrollment, and they have, in addition, a personal knowledge of the proceedings before them.

On the other hand, if the journal is to be controlling, how much greater the opportunity for both fraud and

mistake, when the clerk may, by an omission or an error or by a single destroying entry, defeat the validity of an enrolled act which all the world knows to be lawfully passed.

Chief Justice Nelson, afterwards associate justice of this court, in *Hunt* vs. *Van Alstyne* (25 Wendell, 603), in considering the effect of a certificate of the presiding officer of one of the houses of the New York legislature that a bill had received a two-thirds vote, said:

> There are only two modes of contradicting it: 1. By the journals of the two houses; and 2. By parol testimony. The presiding officer had all the benefit of the first; the ayes and noes are taken, and the journal made up under his supervision and control. His means of ascertaining and determining the fact, when he declares the law to be passed, exceed those of any other tribunal that might afterwards be called upon to inquire into it. Besides, the hurry and looseness with which the journals are copied, and the little importance attached to the printed copies, necessarily impair confidence in their correctness. *They are most uncertain data upon which to found a judicial determination of the rights of property, much more of great constitutional questions.*

An illustration is afforded in this very case of the absurdity of making laws dependent for their validity on the journals. Neither counsel nor the courts below had any access to the journals of either House, for they were not used at the hearing, and this, in a judicial investigation where they were chiefly in question. Yet, under the claim of the appellants, every person within the jurisdic-

tion of this Government is charged with notice of all defects in the passage of laws, wherever lurking in the labyrinth of details contained in a journal which has been inaccessible. Courts themselves decide that they will not notice defects in a seeming act, shown by the journals, unless specially called to their attention, and yet they charge a knowledge of such defects upon every citizen and resident, though he is absolutely without the means of knowing them. Of course, to this it may be answered that the rule which raises a conclusive presumption of notice of such records is based not on actual notice or the means of knowledge, but upon public policy. We are appealing to a sound discretion which the court may exercise in the selection of the trustworthy sources of information as to the passage of laws, and these considerations of practical justice may properly suggest a counter public policy which will forbid the use of such obscure, inaccurate, and unread memorials to invalidate the generally accepted law.

The importance of absolute certainty in the promulgation and publication of laws of which 62,000,000 of people are charged with notice, and by which they are subjected to innumerable responsibilities, can not be exaggerated. Public policy requires, therefore, that that mode which Congress has itself provided for the recording and promulgation of laws should be treated as the most appropriate and trustworthy evidence of their existence and contents.

Much greater reason exists for holding that the legal record of an act of Congress should import verity than that a record of a court should do so. The one affects

every citizen and every person within the jurisdiction of the Government; the other affects only the parties to the case; yet the view we are opposing, would give to the judgment of the humblest justice of the peace more of dignity and verity than an enrolled act deposited with the custodian of the great national seal and bearing the sign manual of the three highest officers of the nation. As was said by Dickson, judge, in the case of *Freeholders of Passaic* vs. *Stevenson* (46 N. J. Law, 190):

> The Secretary of State may be regarded as the clerk of the legislative department of the Government, and if there appear in his office instruments having the form of law which have not been adopted by the legislature as law the citizen aggrieved must go to the legislature for redress just as he would be obliged to go to a court whose records falsely showed a judgment against him. If he says the legislature is not in session and can not act until his injury is complete he may be answered that the same imperfections attend the methods of judicial redress; if he suggests that the legislature is not or will not be willing to purge its records from falsehood, he must be answered that it would be indecent for courts to act on such suggestions. The behests of the Constitution as to the mode of legislative procedure are addressed to the legislature itself, and when that department of the Government has declared that in accordance with those behests it has enacted a law the executive and judicial departments must receive that declaration as verity.

The argument ordinarily pressed to justify an examination of the journals by the court, is that it must be had to enable the court to determine whether the legislature

has followed the mode prescribed in the Constitution for the enactment of laws. Herein is said to be the distinction between American legislatures and the British Parliament, the latter being omnipotent and uncontrolled by any written constitution. The argument may have some force in those States where the constitution prescribes a certain legislative mode of procedure in the enactment of laws, but it has no bearing where an act of Congress is under consideration. In many State constitutions there are provisions which require three readings of every bill, the recording of the yeas and nays in the journal on the final passage of every bill, and a majority vote of all members elected. In some States it is provided that bills shall not be introduced except within a certain number of days after the beginning of the session. The Federal Constitution has none of these. It is only such restrictions that can justify an examination of the journal by the court. Thus in *People ex rel. Barnes* vs. *Starne* (35 Ills., 121), Chief Justice Walker says:

> Were it not for the somewhat peculiar provision of our Constitution, which requires that all bills before they can become laws shall be read three several times in each house, and shall be passed by a vote of a majority of all the members elect, a bill thus signed and approved would be conclusive of its validity and binding force as a law. But this provision having been adopted to prevent improvident legislation, and to prevent the enforcement of bills that were never enacted into laws, the means for its enforcement are implied.

It is just as essential in the British Parliament that a bill should be assented to by a majority of a

quorum of both houses as it is in the Congress of the United States. A minority of a quorum in neither body can act for the body. The question whether the enrolled act shall be controlling is therefore, with respect to Congress, not a question of power, but a question of evidence. Both Parliament and Congress have the power to enact what shall be conclusive evidence of statutory law (*South Ottawa* vs. *Perkins*, 94 U. S., 269). Neither body has enacted such a provision; but custom and positive law together have provided a record for the acts of each, and in order to accomplish its proper purpose that record, when complete, should be the best evidence.

It will be said that the foregoing discussion is foreclosed in this court by the case of *Gardner* vs. *The Collector* (6 Wall., 499). There the question was as to the time when an act of Congress went into effect. The date of approval by the President on the enrolled bill was defective. It gave the month and the day of the month, but did not give the year. The question was whether the omission of the year could be supplied, and the court held that it might be, from the journals of either House. In so holding Justice Miller made the following statement of the principle (p. 511):

> We are of opinion, therefore, on principle as well as authority, that whenever a question arises in a court of law of the existence of a statute, or of the time when a statute took effect, or of the precise terms of a statute, the judges who are called upon to decide it have a right to resort to any source of information which in its nature is capable of conveying to the judicial mind a clear and satisfactory answer to

such question, always seeking first for that which in its nature is most appropriate, unless the positive law has enacted a different rule.

This expression of opinion, which was not necessary to the case before the court, except with respect to the time of the taking effect of a statute, still leaves to be determined what evidence in its nature is most appropriate in a court of law to sustain the existence of a statute or its precise terms.

We do not claim that the journals of the two Houses are not records of which the court may take judicial notice. (See section 895, R. S.) Indeed, for many purposes, the court may well consult and depend upon them. (See *Edger* vs. *Commissioners*, 70 Ind., 331, where the uses of the journals for other purposes than impeaching the enrolled act are pointed out.) Nor do we claim that, in determining the existence or contents of a law, courts may not take judicial notice of all official records which they regard as trustworthy. We have no wish to combat the principle announced by Mr. Justice Gray in *Jones* v. *The United States* (137 U. S., 202). Our contention is that, the enrolled act, duly authenticated and deposited as a completed record, is the most appropriate evidence of the existence and contents of the law, and that inconsistent facts appearing on the journal ought not to be held of sufficient weight by the courts to impeach it.

What Mr. Justice Miller and the court in the Gardner case were considering was the power to complete, by extraneous evidence, the record of a statute which was defective. The case has no application to a conflict between an enrolled act and entries in the journal. This is most

clearly shown by the citation from *The Prince's Case* (8 Repts., 28), with which Mr. Justice Miller concludes his opinion. He says:

> In the Prince's Case the rule on this subject is laid down by the court in the following language: "As to the fourth point, it was resolved, that against a general act of Parliament, or such whereof the judges *ex officio* ought to take notice, the other party can not plead *nul tiel record*, for of such acts the judges ought to take notice. But if it be misrecited, the party ought to demur in law upon it. And in that case the law is grounded upon great reason, for God forbid, if the record of such acts should be lost or consumed by fire or other means, that it should be to the general prejudice of the commonwealth, but rather although it be lost or consumed, the judges either by the printed copy or by the record in which it was pleaded, or by other means, may inform themselves of it."

Justice Miller adds:

> In this case the lord chancellor was assisted by a judge from each of the common law courts, of whom Coke was one, and the decision as reported by him, and the reason on which it was founded, are entitled to the highest consideration.

Nothing in this quotation from the Prince's Case justifies the inference that, if there is extant a duly authenticated record of an act of Parliament, reference may then be had to other sources to impeach it. On the contrary it will appear from another case, in which the lord chancellor of England again called to his assistance Lord Coke and with him Lord Hobart as common-law judges, that where such

a record was extant it could not be contradicted by a use of the journals of Parliament. In *The King et al.* vs. *Arundel et al.* (Hobart, 109), reliance was had, by one of the parties, upon a private act of Parliament enforcing an award of the King in the controversy. An objection was made to the validity of the act on the ground that the journals of the House of Lords showed that the bill, as it passed the Commons, had a proviso annexed to it which did not appear in the record of the bill as it was enrolled in Parliament and signed by the King. Lord Hobart says (Hobart's Reports, p. 110):

> But now suppose that the journal were every way full and perfect, yet it hath no power to satisfy, destroy, or weaken the act, which being a high record must be tried only by itself, *teste meipso*. Now, journals are not records, but mere remembrances for forms of proceedings to the record; they are not of necessity, neither have they always been. * * * The journal is of good use for the observation of the generalty and materialty of proceedings and deliberations as to the three readings of any bill, the intercourses between the two houses, and the like, but when the act is passed the journal is expired.

This is of equal authority with the language quoted from the Prince's case, in 8 Coke, because it is the report of a case by Hobart, who, with Coke, decided it. The case is also reported under the name of *The King* vs. *Howard*, in Moore's cases, No. 1112, p. 823, but the report is much less satisfactory.

Lord Hobart in *King* vs. *Arundel* says that public acts were enrolled in chancery, and that the enrollment in chancery was the original record of such acts, whereas the

original record of private acts was simply the original acts as they passed the houses, filed in Parliament. This explanation is necessary to make intelligible the case of the *College of Physicians* vs. *Cooper* or *Hubert* (3 Keble's Repts., 587), where the question arose as to the validity of a public act of Parliament which had been certified out of chancery to the court of the king's bench, the objection being that the roll thus certified did not have on it the royal assent. Sir Matthew Hale, the lord chief justice, held that the enrollment in chancery was conclusive. He said (p. 588):

> This Court cannot send to the Clerk of the Parliament, but only the Chancery; and if there be any defect on the Roll it must be amended in Chancery; but this court must take it as certified from the Chancery, and though the Statute Roll be but a transcript from the Bill, it hath always been accepted as the Law. Jones, 104, § 5. And the Parliament Roll that hath the Bill, and the answer of the Lords, or of the King, is but as the matter was delivered, which is no warrant for a Statute now.

It is clear from these two authorities—and they have never been overruled in England (see Resolution of Judges, Jones Rep., 101, 104, § 5, *Earl of Oxford's Case*; Gilbert's Law of Evidence, vol. 1, p. 8; Starkie on Evidence, 273, 274)—that the enrolled act in chancery, as to public laws, and the original bill filed in Parliament as to private acts, when in existence, were conclusive evidence of the valid passage of the acts as therein set forth.

There are cases decided by this court in which the journals of State legislatures have been examined and the

enrolled act impeached with the evidence they furnished. (*South Ottawa* vs. *Perkins*, 94 U. S., 260; *Walnut* vs. *Wade*, 103 U. S., 683; *Town of Ohio* vs. *Frank*, 103 U. S., 697; *Post* vs. *Supervisors*, 105 U. S., 667). But these were all cases involving the validity of laws of the State of Illinois, in which this court was obliged to follow the rule laid down by the supreme court of that State (see *In re Duncan*, 139 U. S., 449, 456). They are not, therefore, authority upon the question whether, under the federal Constitution and as a principle of federal law, the journal of Congress may be used to impeach the validity of an act duly authenticated, enrolled, and deposited in the office of the Secretary of State.

Great conflict of authority exists in this country upon the question we have been discussing. The leading case on the subject in favor of our view is that of *Pangborn* vs. *Young* (32 N. J., Law 29), where it was held that the enrolled act signed by the presiding officers of the two houses, approved by the governor, and deposited in the office of the Secretary of State was not impeached by the journals. If the evidence of the journals had been permitted to control, it would have shown that the bill in question, when it was passed by the two houses, had important amendments which were not contained in the enrolled act as approved by the Governor, and that the act was therefore void. The journals, however, were not credited and the act was sustained. Chief Justice Beasley's opinion in reaching this conclusion is so strong and convincing that we regret not being able to set it out in full. The opinion has been twice approved and followed by the Court of Errors of New Jersey (*Passaic Freeholders*

vs. *Stevenson*, 46 N. J. L., 173; *Standard Underground Cable Company* vs. *The Attorney-General*, 46 N. J., Eq. 270). Other well considered opinions upholding the same view will be found in *Weeks* vs. *Smith*, 81 Me., 538; *Sherman* vs. *Story*, 30 Cal., 253; *State* vs. *Swift*, 10 Nev. 176.

The enrolled act, when a completed record, has been held to be the best and most appropriate evidence in Connecticut, Vermont, New Jersey, New York, Pennsylvania, Maine, Maryland, North Carolina, Mississippi, Indiana, Missouri, Iowa, Louisiana, Texas, Nevada, and California, sixteen in all. In Maryland, Missouri, and California, a change in constitution seems to have required the adoption of a different rule, but the previous decisions have full application to the Constitution of the United States. In Alabama, Arkansas, Colorado, Florida, Illinois, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, Oregon, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, Wyoming, nineteen in number, the journals may always be used to impeach the enrolled act. We do not find any decisions taking a position on the question in Delaware, Georgia, Idaho, Massachusetts, Montana, North or South Dakota, Rhode Island, or Washington. For the information of the court we have collated in an appendix, by states, all the authorities we have found upon the question. Though before alluded to, it may again be noted that the ruling in many of the States which allows the legislative journals to be used to impeach enrolled acts, depends upon peculiar phraseology in the State constitutions, not to be found in that of the United States.

The amount of litigation produced by the uncertainty and instability of the law in States where the enrolled act is but *prima facie* evidence of its lawful passage, shown by the list of cases which we have appended (see particularly Alabama, Arkansas, Illinois, and Michigan), is itself a strong argument in favor of what may be called the English rule. Under that rule, surely, we should not have the ridiculous spectacle of the same court holding a law to be void and of no effect in 1871 and valid in 1873, because, in the latter case, sufficient proof of the defect in the law had not been offered in the court below. (See *People ex rel., Charles Reitz et al.* vs. *Calvin De Wolf*, 62 Ill., 253; and *Charles F. Happel et al.* vs. *George W. Brethauer*, 70 Ill., 166.)

The straits to which courts that regard the journals as ultimate proof of the law are driven in the effort to explain away their mistakes, omissions, and inaccuracies, and to sustain the law, are so palpable as to enforce the sound policy of abiding by the enrolled act. As illustrations of this, see *Supervisors* vs. *Heenan* (2 Minn., 330); *In re Vanderberg* (28 Kans., 243); *Kansas* vs. *Robertson* (41 Kans., 200).

While we concede that the number of courts sustaining our contention is less than that maintaining the contrary, we confidently appeal to this court, on the reason of the thing as well as on the strongest grounds of public policy, to take, as most trustworthy and appropriate, the certain and complete record evidence of the law provided by Congress.

The presumption of validity arising from the due signatures, authentication, and deposit of the enrolled act is

strengthened, if it needs support in this case, by the subsequent recognition which Congress has made of the tariff act as a valid law.

December 15, 1890, Congress passed an act providing for a rebate on original and unbroken factory packages of smoking and manufactured tobacco and snuff, as an amendment to the "act to reduce the revenue and equalize the duties on imports, and for other purposes, approved October 1, 1890" (26 Stats., 689).

On March 3, 1891, an act was passed providing that nothing in the act approved October 1, 1890, should be held to repeal or impair the provisions of the reciprocity convention with the Hawaiian Islands.

On February 18, 1891, Congress passed a joint resolution to correct an error of punctuation in the tariff act of 1890.

It has been held that if an act is invalid by reason of a failure to comply with a constitutional requirement in its passage, such recognitions as these would amount to a reënactment of the law (*Attorney-General* vs. *Joy*, 55 Mich., 94), and for the very good reason, that if every person within the jurisdiction of the State or Government be charged with knowledge of the invalidity of a law arising from some defect, in the legislative proceedings, apparent upon the journals, the legislature itself must be charged with the same knowledge. A subsequent recognition by the legislature of the invalid act must be presumed to be with knowledge of its invalidity, and must therefore indicate an intention on the part of the legislature to give it a validity which it did not have before. If such be

the effect of subsequent recognition in the face of admitted invalidity, it would seem that when the validity is in dispute, subsequent recognition should be strong evidence in favor of the original lawful passage of the law.

It results from what has been said that the complete record of the enrolled act, which we have in this case, can not be impeached by the journals, and *a fortiori* that it can not be impeached by other evidence. The tariff act of Oct. 1st, 1890, was, therefore, validly passed.

2.

If we concede that the enrolled act is only *prima facie* evidence and that the journals may impeach it, the case of the appellants is not improved. The journals in this case do not show any facts inconsistent with the passage by the two Houses of the tariff bill as it was enrolled. Appellants' claim is that a section, No. 30, which provided for a rebate of internal-revenue tax upon certain packages of tobacco was in the bill as it finally passed both Houses, but was omitted in enrollment.

For the purpose of demonstrating that no such fact appears from the journals, we have had printed, in a separate appendix to this brief, every entry in the journals of the House and Senate concerning the tariff bill. Nowhere in either journal is a section 30 referred to or set out, except that, in the conference report (see separate Appendix, p. 29), the conference committee recommended—

> That the House recede from its disagreement to the amendment of the Senate numbered 448, and

agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SECTION 30. *That on and after the 1st day of January, 1891, the internal taxes on smoking and manufactured tobacco shall be 6 cents per pound, and on snuff 6 cents per pound.*

And the Senate agree to the same.

This section 30 is incorporated in the enrolled act, but it is not the section 30 referred to by appellants. Appellants claim that original section 30 was stricken out by amendment No. 449 in the Senate and that in the conference report, amendment No. 449 was receded from by the Senate, which restored the section to the bill. The conference report refers to four hundred and ninety-six amendments made in the Senate, but it nowhere appears on the journals what those amendments were, and it is, of course, impossible to tell the purport or effect of amendment No. 449. It follows, therefore, that it can not be shown from the journals that appellant's section 30 ever was in the bill, or if in the bill, that it was not stricken out.

Inasmuch as the journals reveal no discrepancy how can the appellants show that there was an omission in the enrolled act?

The only evidence offered in the court below tending to show the discrepancy claimed, was a paper purporting to be original House bill No. 9416, as introduced into the House of Representatives April 16, 1890; another purporting to be House bill No. 9416, as it was reported to the Senate by Senator Morrill, with amendments, Sep-

tember 9, 1890; and a third purporting to be House bill No. 9416, as it was said to have accompanied the conference report. This will appear by reference to the return made by General Appraiser Ham to the order for the taking of further evidence, issued by Judge Blodgett in the Marshall Field & Co. case. (See record No. 1052, page 23 *et seq.*)

Without these bills, there is no evidence whatever to establish the facts with reference to the passage and enrollment of the tariff act as they are claimed to be by the appellants. The existence and contents of a law are not matters of evidence, but of judicial notice. (*Gardner* vs. *The Collector*, 6 Wall., 499.) The question, therefore, is whether the bill, as introduced and as amended at various stages in its legislative history, though not spread upon the journals, may be judicially noticed by the court, to impeach the enrolled act. No provision of law exists for recording or filing in any office, as a public record, the bills introduced into Congress, the bills as they are reported from either House, or the bills as they are reported by committees. There is no appropriation for their publication by Congress, and there is no way of proving their contents except by oral evidence. They do not come within the description of any official document whose proof by certificate is provided for in sections 882–908 R. S., inclusive. To the fact that the printed bill produced was the bill introduced in the House, or was the bill reported in the Senate, or was the bill which accompanied the conference report, any member of the House or Senate, or any spectator of their proceedings,

would be as competent a witness as an officer of those bodies. The authenticity of these bills must lie wholly in parol. Appellants, therefore, seek by parol evidence to show that the enrolled act does not contain a provision which was contained in the bill as it passed both Houses. Can this be done? Unquestionably it can not. Courts take judicial notice only of official records in determining the existence of laws. (*Jones* vs *The United States*, 137 U. S., 202.) They can not notice facts in parol, because if they could, then there might be a conflict of parol evidence. If such evidence is permissible, then, to use the language of Attorney-General Black (9 Op. Attys. Genl., 3): "What is in or what is not in a statute would be a question as open to contradictory proof on both sides as the terms of a horse trade." Courts can take judicial notice of nothing with respect to which they can not be certain. It needs no argument to show that facts provable only by parol evidence are not included within such a limitation. Moreover, matters within judicial notice must be such as will be at hand for the consideration of every court at all times. We may well ask opposing counsel how they would now bring to the attention of the court the tariff act of 1842 as it was introduced, or as it was amended, or as it passed either House, unless it was spread upon the journals. Is the validity of a law to depend upon the lapse of time and the death of witnesses after its passage?

Some sanction for the argument that the journals may be consulted is found in the fact that there is a constitutional injunction that they be kept, and that, by reason thereof and of section 895, R. S., they are records of which the courts in proper cases will take notice. But

it can not be that the bills, scattered like the sibylline leaves, without marks of identity or authentication upon them, with no proper custodian, after the Congress in which they were introduced is *functus officio*, can be picked up, verified by oral statement, and used to impeach the solemn record of the enrolled acts.

Not only would the bills thus introduced impeach the enrolled act, but they would also impeach the journals of the House and Senate, for we find upon page 33 of the separate Appendix (House Journal, page 1117) that Mr. Kennedy, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bill H. R. 9416, An Act to reduce the revenue and equalize the duties on imports, and for other purposes. On page 74 of the separate Appendix (page 576 of the Senate Journal) Mr. Dixon made a similar report.

It will be said, however, that, in at least the Marshall Field & Co. case, the United States is bound by the stipulation made by the United States attorney for the northern district of Illinois, that these bills might be introduced (Record No. 1052, page 21), and as there was no objection to their introduction, that it is too late now to argue the case as if they were not to be considered. We are dealing not with a question of fact, but with a question of law (*Gardner* vs. *The Collector*, 6 Wall., 499). Neither by stipulation nor admission can any party to a suit make the law to be different from what it is.

Judge Blodgett found certain facts as to section No. 30 from *the admissions in the pleadings* and from the evi-

dence. (Record, No. 1052, p. 33, *et seq*). No fact with reference to the passage of a law, can be found by the circuit court or by this court, though admitted upon the record, unless it appears from something of which the court may properly take judicial notice.

In *Attorney-General* vs. *Rice* (64 Mich., 385), it appeared by the admission of the defendant on the pleadings that a skeleton bill—that is a bill with only a title and no body—was introduced in the House. It did not appear on the face of the journal that it was a skeleton bill, but if it were, then the act in question was invalid under the Constitution. The court refused to consider the admission, saying:

> It is claimed, by the Attorney-General that it is admitted on the pleadings that no bill was ever introduced, but that the title indorsed upon a piece of blank paper was put in. Courts do not allow parties to stipulate or agree, or admit by pleading, that a statute was not properly or constitutionally passed by the legislature.

In *Legg et al.* vs. *Mayor, etc., of Annapolis* (42 Md., 203, 224), the court say:

> Indeed, the court would not be justified, in such case as this, in taking the admissions or confessions of the defendant as evidence upon which to declare a public statute a nullity. The public are interested in maintaining the statute, and it is not competent to parties, though engaged in an adverse litigation, to procure a public statute, affecting the public interest, to be declared a nullity, upon their mere allegations and admissions, as to the manner in which the statute

was enacted by the legislature. Proof of a higher and more reliable character should be required in each case.

See, to the same effect, *Happel* vs. *Brethauer* (70 Ill., 166), *Passaic Freeholders* vs. *Stevenson* (46 N. J. L., 173, 186).

It thus appears that we are not embarrassed by any stipulation in urging our objection to the consideration by the court, in this controversy, of the bills introduced in evidence below. Many authorities support us in the objection. We have examined all the cases cited at the close of this brief, and the list is believed to contain every case on the general subject, in this country. In only two of them, has a court deemed it proper to resort to the bills not contained in the journals.

In the first of these, the case of *Berry* vs. *The Baltimore & Drum Point Railroad Company* (41 Md., 446) the court did examine the engrossed bill, and there considered a discrepancy between the engrossed bill as it passed both houses and the enrolled act as it was approved by the Governor, though it would not have appeared from an examination of the journals alone. The case arose under the constitution of Maryland of 1867, and by section 27 of that instrument it was provided that no bill should be read a third time and passed *until after it had been actually engrossed for a third reading.* By the law of Maryland the engrossed bills were filed with the Secretary of State. The court therefore regarded such a bill, whose existence was provided for by the constitution and laws, as a legitimate part of the record of the passage of the bill of which they could take judicial

notice. Reliance was put upon the case of *The Supervisors of Ramsey County* vs. *Heenan* (2 Minn., 330) to sustain the proposition that the court may inspect the original bills on file with the Secretary of State, but that case does not justify such use of it. By the expression "original bill" in the Minnesota case is meant the enrolled bill signed by the Governor, and not the bill as it was introduced in the house or senate, or as it passed either body before enrollment.

In *Chicot County* vs. *Davies* (40 Ark., 200), bills on file in the office of the Secretary of State were considered to impeach the enrolled act, but an examination of that case will show that resort to such action was based on the statutes of the State.

With these two exceptions the authorities are uniformly in accordance with our contention.

The supreme court of Kansas, at a time when Mr. Justice Brewer was a member, passed upon the very point. In *Division of Howard County* (15 Kans.,194), it appeared from a comparison of the engrossed bill and the enrolled act that section 3 of the bill as it passed both houses was omitted in the enrolling, and before the Governor signed the bill. The omission did not appear, however, from the journal. The court held, all the judges concurring, that the engrossed bill as it passed the two houses could not be used to impeach the enrolled act. Say the court (p. 210):

> The statutes require that the Secretary of State shall publish the laws from these enrolled bills filed in his office (Gen. Stat., 544, § 2). The Secretary of State is also required to publish the legislative journals (Gen. Stat., 544, § 5). It will be noticed that

> the legislative journals and the enrolled bill are the only records required by law to be kept for the purpose of showing any of the legislative proceedings. There is no provision for preserving the engrossed bills as a record of the legislative proceedings. And, as the legislative journals and the enrolled bills are, by law, records, and the only records of legislative proceedings, they must of course import absolute verity, and be conclusive proof as to whether any particular bill has passed the legislature, when it passed, how it passed, and whether it is valid or not.
>
> * * * * *
>
> We do not think that we can resort to evidence outside of the enrolled bill, and outside of the journals of the legislature, for the purpose of impeaching the enrolled bill as a valid law.

In *People, ex rel. Frank M. Hart*, vs. *Frank McElroy et al.* (72 Mich., 446) the same question was considered with the same result. By the constitution of Michigan no bill can be passed by the legislature unless introduced within fifty days from the opening of its session. It is held by the Supreme Court that this restriction does not prevent the introduction and passage of any germane amendment or substitute, after the fifty days, to a bill introduced within the time limited. In the case cited the validity of an act was attacked on the ground that it was introduced as a substitute, after the fifty days, for a bill to which it was not germane, and it was proposed to establish this fact not from the journals, because they only showed the titles of the bills, but by introducing the bodies of the bills for comparison by the court. Say the court:

> We certainly can not act upon anything not found in the journals, nor can we presume that any require-

> ment of the Constitution has not been fulfilled, unless the fact appears affirmatively in such journals; and every intendment is to be made in favor of the constitutionality of the passage of the act. * * * The body of this bill, as introduced by Mr. Wellman, does not appear in the house journal, nor does the Constitution require that it should. We have no right to presume that the body of the substitute was not germane to the body of the bill. * * *
>
> We are not informed by the journal what the description of this territory was in the body of the bill as introduced, and we can not go outside of the journals to ascertain it.

The same principle, on a similar state of facts, has been announced by the Supreme Court of Michigan in the cases of *Attorney-General* vs. *Rice* (64 Mich., 385); *Sackrider* vs. *Board of Supervisors of Saginaw County et al.* (79 Mich., 59); and *Caldwell, Treasurer*, vs. *Ward* (83 Mich., 13).

In *Hughes* vs. *Felton* (11 Colorado, 489–492) the court say:

> It is a general, if not universal, rule, that courts, in determining the validity or invalidity of a legislative act, do not, for the purpose of impeaching such act, permit of or consider evidence outside of the act itself, the enrolled bill, and the journals of the two houses.

In the case of *Happel et al.* vs. *Brethauer* (70 Ills., 166) the court said:

> We must take the law as we find it written in the statute. If the constitution has not been complied with in its passage, this fact must be shown either by

> the printed journals or the certificate of the secretary of state, the custodian of legislative proceedings. In no other mode can we be properly advised.

In *Wabash Railroad Company* vs. *Hughes* (38 Ill., 174), a statute provided how a bill, which had become law because not returned in the required time by the Governor, should be authenticated. The court held that the absence of such authentication invalidated the law. Said Walker, C. J.:

> Courts must have some means of knowing that a bill has become a law; and the knowledge of courts in that regard must be derived from record evidence alone, furnished at the time by the law making power. Whether bills have or not become laws can only be known from the evidence which the journals and the original bills with their indorsements afford. If upon inspection of a bill, it is found duly authenticated and the journals show that it passed both houses by the number of votes required by the Constitution, and the ayes and noes are entered upon the journals, courts will, if it be a public law, regard and act upon it as such.

It is manifest that by "original bills" here the Chief Justice means the enrolled act.

In *State* v. *Kiesewetter* (45 Ohio St., 254) a bill passed both houses of the general assembly, as appeared by the journals. It was not, however, spread upon the face of the journals, nor was it signed by the presiding officer of either house, nor enrolled as a law, nor filed with the Secretary of State, nor published among the laws. By the Revised Statutes of Ohio it was provided that when a bill was introduced into either house of the legislature it should be printed, and that five copies should be depos-

ited with the State librarian. It was proposed to show by the State librarian that the copy produced was a correct copy of the bill as introduced, and then by use of the journals to prove the complete bill as it passed both houses. The court declined to consider the evidence. They held that it was parol proof which was incompetent. Referring to the copies of the bills deposited with the State librarian the court say, page 259:

> No provision is made for their certification as true copies, nor for special care in their safe-keeping, nor for perpetuation of evidence of contents by a record of them. The librarian is required to simply preserve the copies which he receives, a duty which attaches to all books and pamphlets of which he has the care. He is not required to make copies for use elsewhere, nor is provision made for a certificate of any kind or for any mode of authenticating them. Yet, if this be competent testimony, the occasion for its introduction may arise as well in any court in the remotest county in the State as in this court. Copies deposited in the library furnish a convenient source of information to any person interested in pending legislation, but it can not be that the legislature intended that a copy of a bill found in the State library should be treated as a record of a law or as taking the place of signatures of the presiding officers, and it is apparent that the admission in evidence of the testimony proposed would establish a precedent of a loose and most dangerous character.

See also upon the question of going outside of the journals for evidence to contradict the enrolled act. *State ex. rel. Herron* vs. *Smith* (44 Ohio St., 348); *Miller* vs. *State*

(3 Ohio St., 475–484); *State* vs. *Moffitt* (5 Ohio Repts., 363); *Wise* vs. *Biggar* (79 Va., 269); *State* vs. *Brown* (20 Florida 407). It will be noted that all the foregoing cases were decided by courts which hold that the journals may be used to impeach the enrolled act.

In *Koehler and Lange* vs. *Hill* (60 Iowa, 543) the question was as to the passage of an amendment to the constitution which was required to pass two assemblies. The journals showed a discrepancy between the resolution as it passed the first assembly and as it passed the second. It was attempted in the case to introduce what was said to be the original resolution passed in the second assembly, and which did not differ from the resolution as passed by the first, thus contradicting the journal of the second assembly. It appears from the statement in the dissenting opinion that this original resolution had upon it the indorsement and signature of the Secretary of the Senate, the clerk of the house, and the enrolling clerk, to show that it passed. The court held that it could not be considered. See also the language of Judge Prentiss in *In re Wellman* (20 Vermont, 656).

Both reason and authority, then, make it clear that the bills considered by the Board of General Appraisers and the Circuit Court in these case could not properly be noticed by them, and therefore, that it could not be made properly to appear to the court below, and that it cannot be made to appear to this court, that the bill which the President signed was not in every respect the same bill which the houses of Congress passed.

3.

We now come to the question whether, even if the facts be, as they are claimed to be, with reference to the passage of the tariff bill, it is null and void. Concede, for the purpose of the argument, that when the tariff act of October 1, 1890, passed the House and the Senate, it contained the following section:

> SEC. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the Treasury not otherwise appropriated.

and that, in enrollment, by mistake, the section was omitted, and was not in the bill when the President approved it,—does this invalidate the enrolled act? Everything in the bill which the President approved did pass the House and Senate. The act as enrolled, therefore, had

the approval of the three coördinate branches of the legislative department of the Government. Can it be said that because the two Houses approved something in addition to, and in connection with, what appears in the tariff act as enrolled, they did not approve that which now seems to be the law? If what was omitted did not change the operation and character of that which was enrolled, the answer must be in the negative. The soundest public policy, good faith to sixty millions of people who have acted under the law, as well as the financial security of the Government, require that the act shall be sustained if it can be. Therefore if the court can say, from an examination of the omitted portion and the act together, that there is no such connection or interdependence between them as to raise the presumption that Congress would not have agreed to the latter without the former, the court is authorized to say that the enrolled portion passed the two houses. If appellants' section 30 is not a compensation and consideration on its face for some of the provisions of the act which now have the form of law, then it may be truly said that its omission did not destroy the identity *pro tanto* of the bill which passed the Houses with that which was approved by the President, and the court has power to so decide.

It may be said that it is the exercise by courts of a dangerous authority for them to assume to say what Congress would have done under circumstances different from those actually attending the passage of the bill. That courts may do so, however, is now placed beyond the question of a doubt by overwhelming authority. There are many

cases in every State of the Union, and in this court, holding that, though one part of a statute may violate the Constitution and so be null and void, the court will sustain and save the remainder, if constitutional, when it appears that the two parts are not so interdependent as to lead the courts to presume from an examination of the statute itself, that the legislature would not have passed the one without the other. The courts will uphold the valid portion and reject the invalid if separable (*Presser* vs. *Illinois*, 116 U. S., 252, and cases cited).

The analogy between saving the act without section 30, supposing it to be unconstitutional, and saving the act without section 30, because it was not approved, is complete. This is evidently Judge Cooley's view, for he says, on page 209 of the sixth edition of his work on Constitutional Limitations:

> It will sometimes be found that an act of the legislature is opposed in some of its provisions to the Constitution, while others, standing by themselves, would be unobjectionable. *So the forms observed in passing it may be sufficient for some of the purposes sought to be accomplished by it, but insufficient for others.* In any such case the portion which conflicts with the Constitution, *or in regard to which the necessary conditions have not been observed, must be treated as a nullity.* Whether the other parts of the statute must also be adjudged void because of the association, must depend upon a consideration of the object of the law, and in what manner and to what extent the unconstitutional portion affects the remainder. * * * It would be inconsistent with all just principles of constitutional law to adjudge

these enactments void because they are associated in the same act, but not connected with or dependent on others which are unconstitutional.

If it be said that there is a distinction between the cases alluded to and the one at bar in this, that in those cases there was a want of power in Congress to pass the invalid portions at all, whereas here Congress might have passed section 30 without any violation of the Constitution, and had the power to pass it, with the approval of the President, the answer is that the cases alluded to are not confined to laws where there is a total want of power on the part of Congress to pass the particular invalid portion. Many of the constitutions of the States provide that every act shall have a title expressive of the subject-matter contained in it. It has been frequently held, and by this court, that in such case, if the portion in the act covered by the title is independent of the portion of the act not referred to in the title, then that covered by the title may stand, though the rest be declared invalid. (*Unity* v. *Burrage*, 103 U. S., 447; Cooley's Constitutional Limitations, 6th edition, page 177, and cases cited under note 1 on page 178.) In such a case there is no doubt that the legislature might have passed the remainder of the act, had it complied with the requirement that its subject-matter should be expressed in the title.

In another aspect, these "title" cases are exactly in point here. The "title" requirement is a constitutional form enjoined upon the legislature in passing the bill. Compliance with it is no less essential to a valid law than the joint approval of the same bill by both Houses and

the Executive. If courts have a right to give effect to a partial or defective compliance with the constitutional requirement as to the title, there would seem to be no reason why they might not assert the same power (when the act has the form of law) in respect of a defective or partial compliance with the requirement as to joint approval of the same bill by the three legislative branches.

An argument which is sometimes made against the view here taken consists in supposing that the bill had been properly enrolled with the omitted section in it, and that the President, when he came to approve the bill, had run his pen through section 30, or had approved the bill expressly excepting from his approval section 30; and in then propounding the question whether such an approval could give validity to so much of the law as he saw fit to include in it. (*Moog* vs. *Randolph*, 77 Ala., Rpts. 597–600).

It is not seen how an answer to this question assists in the discussion. In the case supposed, the approval would be a nullity, because the action would be an attempted exercise by the Executive of the power of amendment—a power not given him by the Constitution. In the case at bar there was no attempt on the part of the President to exercise such a power. The fact that, in the case supposed, and in the case before us, we have the same two circumstances present, the passage of the bill with section 30 by the Houses, and the President's approval of the bill without section 30, does not make the cases the same or require the application to them of the same principle of law. The difference between them is the same as it would be between the President's approval of an entire bill, containing an un-

constitutional section, and his approval of the bill after running his pen through the unconstitutional section. His approval in the first instance would not give effect to a law any different from that which he would approve in the second. But in the first, his act would be entirely valid and in the second, it would be void, because in the second, he would be attempting to exercise the power of amendment.

The President's approval is not here involved, for he certainly approved the enrolled act, the validity of which is in question, as it was presented to him in due form by the duly authorized officers of Congress. The real question is as to the action of the houses—whether, when by their duly authorized officers they made the record to show that they had passed a bill which differed from the bill they actually passed by the omission of a section, the court may give effect to their action upon the bill to the extent of that part which was certified to the President and signed by him. To this question reason, analogy, and authority require an affirmative answer.

There are several well-considered cases in which the exact question here mooted has been presented to the courts, and a conclusion reached according with our contention. The first case is *The King et al.* vs. *Arundel* (Hobart, 109). It appeared from the enrolled copy of the bill, the validity of which was in question in that case, that it first passed the upper house by the consent of the Lords, and then was sent down to the lower house, by which it was returned with the indorsement on the body of the bill *a ceste bille les com-*

mons sont assentus avec le provision annexe—"the Commons assent to this bill with the annexed proviso." But there was no proviso extant upon the record. The bill in this condition had the royal assent upon it, and was filed with the other bills. The court proceeded to consider the effect upon the validity of the bill of the statement that the House of Commons had agreed to a proviso to which the House of Lords did not appear to have assented. Said the court, as reported by Hobart (110*a*):

> If there were a *proviso*, yet it might be sundry ways salvable, though it be not extant; for, first, if it were lost by the fault or negligence of the keeper or clerk of the parliament, that must not avoid the whole act. But suppose that a *proviso* were cancelled by the lords only, yet it might be such a piece by itself as that this act which remains might be perfect and complete without it.
>
> And that three ways specially:
>
> *Because it might be as a part by itself of a several effect from the rest of the act, though all were not in one chapter or continent of the act, as it is resolved in Dive and Manningham's Case, Plo., 65, upon the stat.* 23 *H.* 6, *of sheriffs.*

It is obvious from this language that, in the opinion of Coke and Hobart, if there were a discrepancy between the bill as it passed the House of Commons and the bill as it passed the House of Lords, so that a part which passed the House of Commons was not included in the enrolled bill and the omitted part were severable and not so connected with that which was enrolled as to change its due operation, the enrolled part would stand.

We find also a number of authorities in this country.

In *Berry* vs. *The Baltimore and Drum Point R. R. Co.* (41 Md., 446) the act in question amended the charter of a railroad company. In the third section the time within which the road was to be completed under the original charter, was changed. As the bill was passed by both houses, the time was extended. In enrollment, the year named was by mistake altered from 1875 to 1870, so that the time for completion was shortened instead of being lengthened, and in this form, the bill was signed by the Governor. It was held that the third section of the act was a nullity, but that the rest of the act was valid.

In *The State ex rel. Attorney-General* vs. *Platt, circuit judge* (2 S. C., 150), a code of practice was enacted by the legislature. One division of this code fixed the places for holding court in the various counties. The journals showed that as the act passed the two houses, the place for holding court in Barnwell County was fixed at Blackville. In the enrollment, Blackville was changed to Barnwell, and in this form the act was signed by the Governor. It was held that the section as to the place of holding court in Barnwell County was void, but that the rest of the act was valid.

Willard, associate justice, uses the following language in his opinion:

> When, as in the present case, the act, as a whole, has unquestionably passed through all the requisite stages, but some part, either of a section or clause, or, as in the case in hand, a mere word, is found to constitute the difference between the act in its different stages of progress, it is necessary to look beyond the

expressions of the Constitution to its substantial meaning and intent. As regards the general question, it is much simplified by the fact that the alleged error does not affect the general integrity or efficiency of the act, nor enter into any of the limitations and conditions by which the legislature sought to bound the sphere and scope of its provisions. It was, indeed, urged upon the argument that, in the course of legislative complications attending the passage of the bill, the choice between Barnwell and Blackville became an element of importance as bearing on the composition of the vote that was relied upon to pass it; but that is a matter with which we have no concern, as we are not called upon to analyze the majority that voted for the bill or say what considerations might, or what might not, have influenced any portion of that majority to a different course of action. From the standpoint of legal construction we must regard it as a matter of indifference, so far as the general scope of the act is concerned, whether the selection fell upon Barnwell or Blackville or whether the subject was included or excluded from the bill. It is evident that a bill having in contemplation a complete change in the modes and forms of legal procedure could not be prejudicially affected in its general usefulness and perverted from the objects it was intended to secure by uncertainty as to whether the circuit courts of Barnwell County were to be held at the one place or the other.

It follows, as a necessary consequence, from what has been said, that if the clauses of the Constitution in question operate to the extent of withholding force from a subordinate part of an act on the ground that the formalities required for the act, as a whole, can not be ascribed to such subordinate part, then we not only have power so to declare, but

> may resort to such evidence as, in conformity with the ordinary rules of procedure, may be appropriate to make such fact appear.

The judge concludes:

> Before leaving this portion of the case it is proper to remark, in view of the important bearing of the act in question on the jurisdiction and forms of proceding of the courts, that, in our judgment, the residue of the act, beyond that portion held by us not to be of force as law, is unaffected thereby, inasmuch as that is a distinct and independent matter, no way affecting the scope and efficiency of the act, according to the intention of the law-maker.

In the case of *State ex rel Attorney General* vs. *Hagood* (13 S. C., 46), the principle thus stated in *State* vs. *Platt* was approved by the three judges (see opinion of Willard, C. J., p. 56; McIvor, J., p. 58, and McGowan, J., p. 72), though two of them thought it would not authorize them to uphold a tax law which as enrolled levied $4\frac{3}{4}$ mills and as it passed the two houses only levied $4\frac{1}{2}$ mills.

In *Stein* vs. *Leeper* (78 Ala., 517) there was a substantial variance between the title of the bill as it passed the two houses and as it was approved. It was held that, under the constitution of Alabama, such a variance was to be treated exactly as if it had been in the body of the bill. The bill was a local prohibitory law and mentioned the places to which it was to apply. The variance between the title as passed and the title as enrolled and approved, was in the omission in the enrolled title of one of the places referred to in the act. It was held that the act was void as to that place, but it was held valid as to the places expressed in the enrolled title.

In *Abernathy* vs. *The State* (78 Ala., 411) the act in question prescribed the mode of impaneling jurors. About forty counties were excepted from its operation as it passed both houses. In the enrolled and approved bill, Clay County was among the excepted counties, but as the bill passed the Houses, it was not. The act was held to have validly passed so far as it applied to Colbert County. These two Alabama cases necessarily qualify the effect of the language of Judge Somerville in *Moog* vs. *Randolph* (77 Ala., 597), a fact which is recognized by that learned and distinguished jurist in his opinion as General Appraiser in the Marshall Field & Co. case (see Record 1052, pp. 9–10).

In *Binz* vs. *Weber* (81 Ill., 288) the title of the bill, which authorized the issue of bonds by certain municipalities, when it passed the senate, included the city of Belleville and the towns of Mascoutah and Nashville; but in the House the name of the town of Nashville was dropped from the title. It was held that—

> The mere fact that the title of an act is more restrictive than the title of the bill when it passed one of the houses will not necessarily defeat the entire act, if there be portions of it which are still embraced in the more restrictive title, and which may be executed independently of those portions which have to be rejected;

and the act was declared valid as to Belleville and Mascoutah.

In the case of *In re Groff* (21 Neb., 647), a bill to reapportion the State into judicial districts, and to provide judges therefor, passed the legislature, but in enrollment,

and before being signed by the Governor, was changed by reducing the number of judges from two to one in the second district. It was held that the act being complete in itself as to the first, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth districts, and capable of being executed, was not affected by the invalidity of that part of the act relating to the second district, which was null and void.

In *State* vs. *Van Duyn* (24 Neb., 586) the act, the validity of which was in question, was one apportioning the State into representative districts. The bill as it passed the house differed from the bill as it passed the Senate and as it was enrolled, by a varying provision for the representation of Sarpie County. It was held that, except as to the representation of Sarpie County, the enrolled bill was valid.

In the case of *Stow* vs. *Grand Rapids* (79 Mich., 585) it appeared that a clause giving to the act in question immediate effect passed only one house, but that in the enrollment of the act, the clause appeared and was thus approved by the Governor. It was held that this did not destroy the validity of the enactment, but that it went into effect under the general law postponing its taking effect until a certain time after the adjournment of the legislature. See also *City of Watertown* vs. *Cady* (20 Wisc., 501–503), *State* vs. *Deal* (24 Fla., 293), *Peterman* vs. *Huling* (31 Pa. St., 432).

All these authorities are based on the analogy to those cases which save statutes partly valid by rejecting the unconstitutional part, if separable.

There are no authorities which conflict with these cited. To be sure, cases may be found where, because of a discrepancy between the enrolled act as approved and the act as it passed the houses of the legislature, the law has been declared void. But it will be found that, in all these cases, the variance was in respect to some provision which necessarily affected the whole act except, perhaps, in *Sayre* vs. *Pollard* (77 Ala., 609) which was practically overruled in *Stein* vs. *Leeper* and *State* vs. *Abernathy*, *supra*. Such cases are,

Moog vs. *Randolph* (77 Ala., 597).
Jones vs. *Hutchison* (43 Ala., 721).
Moody vs. *The State* (48 Ala., 115).
The Opinion of the Justices (35 N. H., 579).
Rode vs. *Phelps* (80 Mich., 598).
Smithee vs. *Campbell* (41 Ark., 471).
Dow vs. *Beidelman* (49 Ark., 325).
People ex rel. Reitz vs. *De Wolf* (62 Ill., 253).
Prescott vs. *Trustees* (19 Ill., 326).

It is clear, upon reason and authority, then that if the tobacco rebate section was separable from the rest of the bill, and did not affect the operation of what was enrolled, the act as now recorded is law. This leads to the inquiry, what was the effect, if any, upon the rest of the bill, and especially the part here in question, of the omission of section 30.

The only section involved in these suits is section 1 of the act, and this relates entirely to the duties on imports. The tobacco rebate section is a part of the internal-revenue law, and relates to the tax on domestic manufactures

of tobacco. The articles which are the subject of this litigation are silk and cotton laces, woolen dress goods, woolen wearing apparel, silk embroideries, and colored cotton cloth. What possible connection the ingenuity of counsel can find and point out between the duty on foreign articles of this kind imported and an internal tax upon manufactures of tobacco, we can not conceive. They are not parts of the same system. One is a customs and the other an internal-revenue measure. Said Chief Justice Waite in *Huntington* vs. *Worthen* (120 U. S. 97, 102):

> It is only when different clauses of an act are so dependent upon each other that it is evident the legislature would not have enacted one of them without the other—as when the two things provided are necessary parts of one system—that the whole act will fall with the invalidity of one clause. When there is no such connection and dependency, the act will stand, though different parts of it are rejected.

It is to be borne in mind, that the rebate clause is in reality only a provision with reference to the time when the bill goes into effect in its reduction of the internal-revenue tax on tobacco. It gives the reduction retroactive effect upon all factory packages, upon which the higher rate had been paid before January 1, 1891, and which were unbroken on that day. The very fact that Congress provided that the reduction in the tobacco tax should not go into effect until the 1st of January, 1891, while the change in duties on imports went into effect on the 6th of October, 1890, shows how independent of the first section, was section 30.

The enactment of a tobacco rebate amendment in the second session, so much relied on in this connection by counsel for appellants, may show that Congress was in favor of such rebate but it is by no means evidence, that a rebate provision was a condition precedent or necessary to the passage of the whole bill.

It is said that section 30 must have been an important part of the bill, because the House and Senate differed with respect to its passage, and only came to an agreement at the conference. The argument might have weight under the language of *Moog* vs. *Randolph* (77 Ala., 577), and *Smithee* vs. *Campbell* (41 Ark., 471), if it were true that what sent the bill to conference was an amendment by the Senate striking out section 30. As a matter of fact, according to the showing of the appellants, the Senate struck out of the bill all of the clauses in it relating to the internal revenue, and naturally, as this related to the internal revenue, it went with the rest. But there is nothing to show that the question of rebate on tobacco was a distinct matter of difference between the two Houses.

It would not be too much to say that the proposition for rebate on factory packages was independent even of the clause reducing the tobacco tax. It was a mere provision, not of great importance, to save the manufacturers of tobacco from a close calculation by which they should not make and pay tax on any more packages manufactured during the interval of three months between the passage of the act and Jan. 1, 1891, than they would sell in that time. It did not limit or modify the clause reducing the tobacco

tax but it only extended its operation a little by giving it a slight retroactive effect. In *Tiernan* vs. *Rinker* (102 U. S., 123) this court held that a proviso in a liquor tax law exempting those dealers who sold only wine or beer made in the State was invalid, but that the rest of the tax law was valid as to those who sold other liquors. That was a far stronger case than the one we are considering. It seems unreasonable to maintain that the preliminary and temporary provision of section 30 was so material in the permanent reduction of the tobacco tax as to enable any one to say that the tobacco tax would not have been reduced had the rebate section not been passed with it. And if so, how much less bearing would the omission or insertion of the rebate section have upon the passage of the woolen and cotton and silk schedules?

B.

CONCERNING THE SUGAR BOUNTY AND RECIPROCITY CLAUSES.

1.

Counsel for appellants attack the validity of the tariff bill on the ground that it contains the sugar bounty and the reciprocity clauses which are said to be unconstitutional and to affect the validity of the whole. The first objection to their argument is that, even if the clauses are invalid, the paragraphs of the act under which the duties in the cases at bar were assessed are entirely separable from them, and may stand whether the bounty and reciprocity fall or not.

The sugar-bounty clause (Schedule E, 26 Stats., 583; Separate Appendix, 88) provides for the payment of a bounty of 2 cents per pound to every manufacturer of raw sugar testing not less than 90 degrees, made from beet, sorghum, or sugar cane grown within the United States, and of a bounty of $1\frac{3}{4}$ cents per pound of sugar testing less than 90 degrees and more than 80 degrees. The reciprocity clause (26 Stats., 612; Separate Appendix, 109) provides that, with a view to secure reciprocal trade with countries producing sugars, molasses, coffee, tea, and hides, that part of the tariff act which exempts these commodities from duty shall be suspended, as to importations from any of such countries, by proclamation of the President whenever he is satisfied that the tariff laws of that country, in view of the free list thus established by the United States, are reciprocally unequal and unreasonable, and that

then duties shall be levied on the importations of sugar, molasses, coffee, tea, and hides therefrom at rates provided in the act.

The sugar-bounty clause was for the purpose of encouraging the production of raw sugar in this country. The reciprocity clause was for the purpose of encouraging trade with foreign countries from which we buy sugar, molasses, coffee, tea, and hides. The merchandise which was assessed for duty in the cases at bar was silk and cotton laces, silk embroideries, woolen dress goods and wearing apparel, and colored cotton cloths. It would be difficult to select two classes of merchandise which have less relation to each other, in respect to conditions of either production, use, or cost, than the class affected by the bounty and reciprocity clauses on the one hand, and that affected by the paragraphs of the tariff law, enforced in this case, on the other. The mere statement of the reciprocity clause is answer enough to any argument on that head. The clause was an afterthought. It was not introduced until late in the session, after the bill had passed the House and had been much discussed in the Senate. It could not have been intended to increase the revenue. Its conditional operation precludes any such idea. It is wholly independent of every other clause in the bill and its passage or failure to pass had no bearing whatever upon the passage of the remainder.

The bounty clause involves, as the reciprocity clause does not, an expenditure of money, which is relied on as giving it a material bearing upon the increase of duties on woolens, cottons and silks. The tariff act

of 1890 was intended, of course, to raise money to pay the expenditures of the General Government. It was intended to equalize the duties theretofore imposed and to reduce the amount of the revenues below those produced under the act of 1883, because the latter were in excess of the needs of the Government. The sugar bounty is to be paid from the Treasury of the United States, and, therefore, out of the general revenues of which the collections under this act will form a large part, But the general revenues were designed also to furnish the enormous amount of money necessary to run this Government and pay the interest on its debt. The estimate put upon the aggregate of the sugar bounties by the Committee on Ways and Means was $7,000,000, and the actual applications for the bounty filed in the Internal-Revenue Bureau show a sum of about ten millions. The annual expenditures of the Government range from three hundred to five hundred millions of dollars. We submit, with deference to opposing counsel, that it is a wild contention that the law which, for now more than a year, has furnished the life-blood to the Government should be set aside and declared void, and the whole financial policy of the country thrown into confusion, because one of its eight hundred provisions directs the expenditure of 2 per cent. of the public income to carry out an unconstitutional purpose. Should the bounty be invalid, in addition to the annual expenses of the Government is that great national debt to which the Secretary of the Treasury has ample authority to devote and doubtless would devote any surplus—a purpose within the letter of the Constitution.

Counsel assign the increase of duty upon woolens, silks, and cottons to the necessity for additional revenues to pay the sugar bounty. There is no more warrant for saying that the duties herein assessed were provided for by Congress in this act to pay the sugar bounty than there would be for saying the same thing of the duty levied by the bill on any other merchandise.

It will be observed that if, in this discussion, the tariff act of 1890 is to be compared with that of 1883, the increase was by no means confined to the woolen schedule. There were increases on linens, wines, and tobacco; in the metal schedule; the glassware schedule, and in many other provisions of the bill, and there were also reductions in duties on many other articles and in the internal-revenue tax. It is obviously absurd therefore to say that any particular increase was made for the purpose of raising the $7,000,000 which the Committee on Ways and Means estimated to be necessary for the payment of the sugar bounty.

Counsel argue that the bounty clause was a consideration and compensation, in the legislative sense, for the clause which put sugar on the free list; that the bounty clause being invalid, the clause exempting sugar from duty must fall with it, that the change of the law by which sugar was put on the free list reduced the revenue $60,000,000, and that this necessitated an increase of duty on other articles to secure revenues sufficient to run the Government. Every increase in the bill, therefore, it is said, of duties, was for the purpose of compensating for the reduction of the revenues collected on sugar, and in this way, the increase on all other articles in the bill is connected with and made dependent upon the bounty clause.

To this argument it may be replied that the reduction in sugar duties was by no means the only reduction in the bill. There were many other articles, the duties upon which were reduced, and the revenues or tax upon which would be lessened. It is impossible, therefore, to connect the reduction of the sugar revenue with the increase of the duties on any particular articles. But, more than this, the reduction of the sugar tax was justified by the surplus under the previous revenue law. The increase in duties on silks, woolens, and cottons must, therefore, be ascribed to some other cause. The fact is, that the increase of duties on those articles was not made for the purpose of increasing the revenue. The higher rates were imposed to give a better protection to the manufacture of such merchandise in this country. They were made with a view to decrease the importations, and with the prospect that the revenues would be thereby reduced.

The report of the Committee on Ways and Means, which introduced the tariff bill (Report No. 1466, Fifty-first Congress, first session), introduced in evidence in the Marshall Field & Co. case below (see Record No. 1049, p. 22), justifies this statement. Upon page 1 of the report referred to, is the following:

> It is not believed that the increase of duties upon wools and woolen goods and upon glassware will have the effect of increasing the revenues. That would, of course, follow if the importations of the last fiscal year were hereafter to be maintained, which however, is altogether improbable. The result will be that importations will be decreased, and therefore

the amount of revenue collected from these sources will be diminished.

In every case of increased duty, except that imposed upon tin-plate (which does not go into effect until July 1, 1891), and upon linen fabrics, the effect will be to reduce rather than enlarge the revenues, because importations will fall off. It was the aim of the committee to fix the duties upon that class of manufactured goods and farm products which can be supplied at home, so as to discourage the use of like foreign goods and products and secure to our own people and our own producers the home market, believing that competition among ourselves will secure reasonable prices to consumers in the future as it has invariably done in the past.

We seek by the increased duties recommended not only to maintain, but to enlarge our own manufacturing plants and check those supplies from abroad which can be profitably produced at home. The general policy of the bill is to foster and promote American production and diversification of American industry.

The court can not find, then, that, if the tax on sugar had not been reduced, there would not have been an increase of duties on the articles whose assessment for duty is here involved. This is the test. (*Little Rock & Ft. Smith R. R. Co.* vs. *Worthen*, 120 U. S., 97.) The sugar-bounty clause and the part of the act for consideration here, are not therefore dependent, the one on the other. The one may stand and the other fall.

The theory of appellants' counsel that a tariff law is always so nicely adjusted that the invalidity of one clause will upset the entire act, has no foundation in fact or practice. It must proceed on the hypothesis that Congress

would not protect industries generally, because for some constitutional or other reason, it can not protect a particular industry, an assumption which is manifestly unwarranted, and which the court can not indulge. The statement made in some authorities that the terms of a revenue law generally make a system, no part of which can be disturbed without disarranging the whole, has little or no application to a tariff law or an indirect tax law of any kind. Where the tax is directly against the property owner, it must be equal and uniform in its operation as to every tax payer, and it is easily seen how a failure of one part of the law might produce inequality all through it. Indirect taxes, like a tariff, are always unequal in their primary imposition, and the inequalities are left to adjust themselves by natural laws.

This court has often sustained tax laws which were invalid, in their application to interstate commerce, in so far as they applied to the subject-matter within State lines. (See *Freeman* vs. *Rucker*, 102 U. S., 123; *Rotterman* vs. *Western Union Telegraph Co.*, 127 U. S., 411.)

2.

CONCERNING THE VALIDITY OF THE BOUNTY CLAUSE.

Though we are confident, for the reasons just given, that the court will dispose of this case without considering the validity of either the bounty or the reciprocity clause, we, nevertheless, feel obliged by the argument of appellants' counsel to discuss the constitutionality of those provisions.

It may be conceded that the bounty must be paid out of the Treasury of the United States from funds raised by taxation, and therefore that, unless Congress has power to levy a tax for the purpose of paying the bounty, an appropriation for a bounty is beyond its power.

Section 8 of Article I of the Constitution, which describes the powers of Congress, provides that—

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States.

Under the language of Chief Justice Marshall in the case of *Gibbons* vs. *Ogden* (9 Wheat., 199), the proper construction of this section is that the power of taxation by Congress is limited to the purposes of paying the debts and of providing for the common defense and general welfare of the United States. Such is the view of Mr. Justice Miller as shown in his recently published lectures on the Constitution. (Miller on the Constitution, page 231. See also Story on the Constitution, 927; Message of President Monroe to Congress, 4th May, 1822, Williams's Statesman's Manual, 492–519.)

Congress has power therefore to levy duties for the purpose of providing for the general welfare of the United States. Is the provision for the payment of bounty to sugar-producers, above set forth, "for the general welfare?" Appellants' counsel contend that it is not, because

it is primarily for the aid of private individuals and only remotely for a public purpose, and therefore not for the general welfare.

It has been held in a number of cases, upon which appellants' counsel rely, both in this court and in the courts of the various States, that taxation must be for a public purpose, and therefore that, where it is proposed by a municipal corporation to pay money or lend credit to a private individual or company as an inducement to the construction of works within the limits of the municipal corporation, the remote consequences of benefit to the people of that corporation are not sufficient to make the purpose of the donation a public one, and laws authorizing the same are void. The leading case upon this subject is *Loan Association* vs. *Topeka* (20 Wall., 655), where it was held that bonds issued by a city to pay a bonus to a manufacturing corporation to build its plant within that city were invalid and beyond the power of the city, even though expressly authorized by the legislature. Other cases to the same effect are numerous.

In *Commercial National Bank of Cleveland* vs. *City of Iola* (2 Dillon, 353), *Mather* vs. *City of Ottawa* (114 Ills., 659), *Weismer* vs. *Village of Douglas* (64 N. Y., 91), *Attorney-General* vs. *City of Eau Claire* (37 Wis., 400), *Opinion of the Justices* (58 Maine, 590), *Coates* vs. *Campbell* (37 Minn., 498), *Allen* vs. *Inhabitants of Jay* (60 Maine, 124), the principle laid down in *Loan Association* vs. *Topeka* has been followed on a similar state of facts. In *Lowell* vs. *Boston* (111 Mass., 454) and *Feldman & Co.* vs. *City Council of Charleston* (23 S. C., 57) it was held that an act of the legislature authorizing a mu-

nicipal corporation to issue bonds for the purpose of raising a fund to lend to those whose buildings had been destroyed by a fire which consumed a large part of the cities, was invalid because the purpose to which the money was to be devoted was a private and not a public one.

In the case of *The State, ex rel. James Griffith et al.*, vs. *Osawkee Township et al.* (14 Kans., 418), an act authorizing townships to issue bonds for the relief of such farmers within their limits as had been deprived, by a total failure of crops, of all seed with which to plant for a new season, was held to be invalid, as authorizing the appropriation of public money for private purposes. (See also *Parkersburg* vs. *Brown*, 106 U. S., 487; *Cole* vs. *La Grange*, 113 U. S., 1.)

The foregoing do not include all the cases on the subject, but they are sufficient to show the principle which the appellants here invoke to invalidate the bounty clause under consideration. We respectfully submit that they have no application to this controversy. They are all of them cases of municipal taxation, which must be for public municipal purposes. It is obvious that the establishment of a particular industry in one place by a bonus to specified private individuals is a very different object for taxation than the encouragement by the National Government of a widespread industry in many quarters of the Union for national purposes, with a view to diversifying the industries of the country and making it independent of other countries for necessities. Judge Cooley, in his work on Taxation, page 71, says:

> In considering the legality of the purpose of any particular tax a question of first importance must

always concern the grade of the government which assumes to levy it. The "public" that is concerned in a legal sense in any matter of government is the public the particular government has been provided for, and the "public purpose" for which that government may tax is one which concerns its own people, and not some other people having a government of its own, for whose wants taxes are laid. There may, therefore, be a public purpose as regards the Federal Union, which would not be such as a basis for State taxation, and there may be a public purpose which would uphold State taxation, but not the taxation which its municipalities would be at liberty to vote and collect. The purpose must in every instance pertain to the sovereignty with which the tax originates; it must be something within its jurisdiction so as to justify its making provision for it.

Again, on page 72:

The grade of the government is also important for another reason. A municipal government is one of delegated and limited powers, whose authority is generally to receive a somewhat strict construction, and which must find the purposes for which it may tax clearly confided to its charge by the State. It is not sufficient that a purpose may seem to belong properly to its jurisdiction, or that the court may believe it ought to have had authority over it; but it must be seen that the authority has been conferred in fact. It is otherwise with the State, which has all the power of taxation not withheld from exercise in the making of the State and Federal Constitutions, and in support of whose action consequently the most liberal intendments are to be made. *It is otherwise with the Federal Union also, for, though its powers are in general like those of the State, but are limited*

and defined by the Federal Constitution, yet, as they concern the most important matters of Government, and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes call for broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections.

The difference between what constitutes a "public purpose" for a municipality and for the Government of the United States is illustrated by reference to those acts of Congress in which direct bounties as acts of charity have been conferred by the United States upon classes of people in this country and in foreign countries. We have taken, from the speech of Senator Daniel upon the constitutionality of the Blair Educational Bill, a table prepared by him evidently with much care and accuracy, showing the various acts of Congress by which sums of money were appropriated from the United States Treasury to assist private individuals in distress. It is found on page 2295 of the twenty-first volume of the Congressional Record, part 3, Fifty-first Congress, March 17, 1890.

Statutes at Large.		Date of approval.	Sufferers, etc.	Amount appropriated.
Vol.	Page.			
2	730	May 18, 1812	Sufferers by earthquake in Venezuela	$50,000.00
3	211	Feb. 17, 1815	Sufferers by earthquake in New Madrid, Mo.	Indefinite.
5	6	Mar. 19, 1836	Sufferers by fire at New York City	Do.
5	131	Feb. 1, 1836	Sufferers by Indian depredations in Florida.	Do.
6	46	Feb. 19, 1803	Sufferers by fire at Portsmouth, N. H	Do.
6	53	Mar. 19, 1804	Sufferers by fire at Norfolk, Va	Do.
6	356	Jan. 24, 1827	Sufferers by fire at Alexandria, Va	20,000.00
9	207	Mar. 3, 1847	Transportation of supplies to sufferers in Ireland.	Indefinite.
12	652	Feb. 16, 1863	Sufferers by Indian depredations in Minnesota.	200,000.00
13	416	July 4, 1864	Sufferers by accident at arsenal, District of Columbia.	2,000.00
14	364	July 4, 1866	Sufferers by fire at Portland, Me	Indefinite.
14	567	Feb. 22, 1867	Transportation of supplies South	Do.
15	24	Mar. 29, 1867	do	Do.
15	28	Mar. 30, 1867	Sufferers in South	Do.
15	28	Mar. 28, 1867	Seeds for destitute in South	50,000.00
15	246	Jan. 31, 1868	Destitute in South	Indefinite.
16	596	Feb. 19, 1871	Transportation of supplies to France and Germany.	Do.
17	51	Apr. 5, 1872	Sufferers by fire at Chicago, Ill	Do.
17	646	Mar. 12, 1872	Postmaster's losses at fire in Chicago, Ill.	Do.
18	34	Apr. 23, 1874	Sufferers by overflow of Mississippi River.	Indefinite.
18	45	Mar. 13, 1874	do	190,000.00
18	303	Jan. 25, 1875	Seeds to sufferers by grasshoppers	30,000.00
18	314	Feb. 10, 1875	Sufferers by grasshoppers	150,000.00
19	374	Mar. 3, 1877	do	285.40
21	27	June 14, 1878	do	663.00
21	1	Apr. 18, 1879	Refrigerating ship—yellow fever	200,000.00
21	66	Mar. 5, 1880	Contributions to colored emigrants free duty.	Indefinite.
21	303	Feb. 25, 1880	Transportation of supplies to Ireland	Do.
21	306	May 4, 1880	Sufferers by cyclone at Macon, Miss	Indefinite.
22	44	Apr. 11, 1882	Seeds to sufferers Mississippi River overflow.	20,000.00
22	378	Feb. 23, 1882	Sufferers Mississippi River overflow	100,000.00
22	378	Mar. 10, 1882	do	Indefinite.
22	378	Mar. 11, 1882	do	Do.
22	379	Mar. 21, 1882	do	150,000.00
22	379	Apr. 1, 1882	do	100,000.00
23	267	Feb. 12, 1884	Sufferers by Ohio River overflow	300,000.00
23	268	Feb. 15, 1884	do	200,000.00
23	269	Mar. 27, 1884	Sufferers by Mississippi River overflow, unexpended balance of appropriation for Ohio overflow.	125,000.00
23	273	June 7, 1884	Sufferers by overflow of Mississippi River.	Unexpended balance.
25	630	Sept. 26, 1888	Sufferers by yellow fever	200,000.00
25	631	Oct. 12, 1888	do	100,000.00

Senator Daniel might have added to the list an act providing for the relief of the inhabitants of San Domingo, resident within the United States, and found in want of support, which was passed as early as February 12, 1794, and appropriated $15,000 for the purpose. (6 U. S. Stats., 13. See also Story on the Constitution, section 991.)

If the principle were to be applied to the National Government which is now invoked by appellants on the theory that national taxation has exact analogy to municipal taxation, then every one of the acts referred to in the foregoing table would be unconstitutional and void; and yet, as we see, they cover a period of a century, nearly the whole life of our present constitutional government. It should be added that in a note to be found in 4 Elliott's Debates, 2d edition, page 431, it is stated that the act for the relief of citizens of Venezuela, which authorized the President to expend $50,000 to purchase provisions for the object, the motion to fill the blank for that amount was moved by the strictest constructionist of the Constitution the country has ever seen, Mr. Calhoun.

The illustrations above given of congressional action, which the history of a century has made constitutional, mark with emphasis the correctness of Judge Cooley's statement, that a much wider latitude with reference to expenditures is to be allowed the congress of a nation than the legislature of a State or the council of a city, and show that those authorities relating to municipal taxation, upon which counsel for the appellants rely, are not applicable to the expenditures of the General Government.

Production of sugar is possible wherever sugar cane, sorghum, beets, or sugar-maple trees will grow. As will be seen from the records of the Internal-Revenue Bureau, the number of applicants for bounty under this law is about 5,000, and they are distributed over twenty-four States, from California to New York and from Texas to Vermont. Promotion of the industry by the bounty, therefore, is possible the country over. It is not local, but national in its operation.

It will be noted also that the sugar bounty is not payable to any particular individuals, but that, to anyone who may care to invest the time and capital in the growing and manufacture of raw sugar, the offer of the Government is open.

The principle was laid down in the case of *Lowell* vs. *Boston*, *supra*, that a purpose was not a public purpose because, by affecting the private interest of a great many individuals, it would ultimately affect the public weal. With respect to municipalities and States, that can have no international relations, this is undoubtedly true, but the subject assumes a very different aspect when treated from the standpoint of the collective industries of a nation in competition with and in relation to the industries of other nations. Questions of foreign commerce and trade have always in every country been the subject of national action. So it is with any national movement toward the encouragement of diversified industries for the purpose of putting a nation in such a condition that it may have, within itself, the power of maintaining its existence, if necessary, independent of, and against the rest of the world.

The modern history of every European nation is full of instances where, both by the indirect means of the levying of duties and by the direct means of bounties, particular industries have been encouraged. To-day, with respect to the very cultivation of sugar, we have the authority of Senator Aldrich, who has made the subject a study, for saying that $45,000,000 is paid as a bounty to producers of sugar who export the same from Germany and France. (Congressional Record, vol. 21, part 10, p. 9876 *et. seq.*) We allude to this as showing the necessity for Government interference in the encouragement of the sugar industry in this country. Such national action is required to offset the encouragement of the same industry in other countries, lest thereby we may be made altogether dependent for the supply of a necessity upon countries thus far removed. (Congressional Record, vol. 21, part 10, p. 9876 *et seq.*)

Alexander Hamilton, when Secretary of the Treasury, made a report on manufactures, to which we shall have occasion several times to refer in a discussion of this subject. It is to be found in the third volume of the works of Hamilton, edited by John C. Hamilton, page 192. In discussing the value of manufactures to the country and their national effect, he said (p. 239):

> Not only the wealth but the independence and security of a country appear to be materially connected with the prosperity of manufactures. Every nation, with a view to those great objects, ought to endeavor to possess within itself all the essentials of national supply. These comprise the means of subsistence, habitation, clothing, and defense.

> The possession of these is necessary to the perfection of the body politic; to the safety as well as to the welfare of the society. The want of either is the want of an important organ of political life and motion, and in the various crises which await a State it must severely feel the effects of any such deficiency. The extreme embarrassments of the United States during the late war from an incapacity of supplying themselves are still matter of keen recollection. A future war might be expected again to exemplify the mischiefs and dangers of a situation to which that incapacity is still, in too great a degree, applicable, unless changed by timely and vigorous exertion. To effect this change, as fast as shall be prudent, merits all the attention and all the zeal of our public councils; 'tis the next great work to be accomplished.
>
> The want of a navy to protect our external commerce as long as it shall continue must render it a peculiarly precarious reliance for the supply of essential articles, and must serve to strengthen prodigiously the arguments in favor of manufactures.

What is here said with respect to manufactures is entirely applicable to the growth and manufacture of raw sugar. By the removal of the sugar duty, Congress found itself confronted with the danger of an absolute destruction of the domestic sugar production. The preservation of the industry in this country was as essential, from the national standpoint, as the manufactures to which Hamilton has reference, and for the same reason.

We have not argued in favor of the encouragement of the sugar industry by tariff or bounty as a Governmental policy, for we fully appreciate that questions of politics and economics are not for this court to decide. The issue

in the present discussion is one of power, not of policy. But it is relevant to the issue, inasmuch as the power to tax depends here on the purpose of the tax, to show that the purpose is national, and neither private nor local.

It is too late, in this year of grace 1891, for litigants to argue that the encouragement of diversified industries is not a national purpose, and, so far as Congress is concerned, therefore a public purpose.

Mr. Madison, in two letters to Joseph C. Cabell, September 18 and October 30, 1828 (Writings of James Madison, vol. 3, pp. 636–648), argues the constitutionality of a tariff for encouraging manufactures, and points out that sanction has been given to this construction of the Constitution by the General Government and by many of the State governments.

A most complete history of the construction by actual legislation and executive action of the Constitution to permit the encouragement of manufactures by a tariff framed for the purpose, is contained in the speech of Thomas S. Grimke, delivered in the senate of South Carolina in December, 1828. The speech is printed in a pamphlet, and bound in a collection of pamphlets to be found in the Library of Congress.

For a comprehensive view of the history of the country with reference to tariff legislation, recourse may well be had to the ninth chapter of Mr. Blaine's Twenty Years of Congress, where the practical construction of the Constitution in favor of a protective tariff is demonstrated.

From 1789 to the present time, successive Presidents have recommended, and successive Congresses have enacted

legislation for the encouragement of certain industries by means of taxation as and for a national purpose. The second act of the First Congress of the United States, approved July 4, 1789, was an act imposing duties, which expressly recited its purpose to be the protection and encouragement of manufactures. The recital is as follows:

> SEC. 1. Whereas it is necessary for the support of government, for the discharge of the debts of the United States, *and the encouragement and protection of manufactures*, that duties be laid on goods, wares, and merchandise imported, be it enacted, etc. (1 Stats., 24).

The tariffs of 1789, 1812, 1816, of 1824, of 1828, of 1842, of 1861, of 1867, of 1874, and of 1883, are all repeated instances of the exercise of the power. Mr. Chief Justice Marshall said in *McCullough* vs. *The State of Maryland* (4 Wheat., 401), where the power of Congress to incorporate a bank was under discussion:

> It has been truly said, that this can scarcely be considered as an open question, entirely unprejudiced by the former proceedings of the nation respecting it. The principle now contested was introduced at a very early period of our history, has been recognized by many successive legislatures, and has been acted upon by the judicial department, in cases of peculiar delicacy, as a law of undoubted obligation.
> * * *
>
> An exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded.
>
> The power now contested was exercised by the first Congress elected under the present Constitution. The bill for incorporating the bank of the United States

> did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. After being resisted, first in the fair and open field of debate, and afterwards in the Executive Cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law. * * * . It would require no ordinary share of intrepidity to assert that a measure adopted under these circumstances was a bold and plain usurpation, to which the Constitution gave no countenance.

What was stated by the Chief Justice with reference to the United States Bank Act has equal application to the protection tariff laws. We do not propose to spend further time in a discussion of their validity. It is an issue long since finally settled.

The principle thus established necessarily justifies bounties, for, in the beginning of the operation of a protective tariff, the amount of duty levied is a bounty to the domestic manufacturer, and it is with a view to such a benefit for him that it is levied. The sugar duties have always had the effect of a bounty to domestic sugar producers. Mr. Madison attempted to distinguish between a protective tariff and a bounty, holding the one to be within the power of Congress and the other not. (4 Elliott's Debates, 2 ed., 525, 526.) Judge Hare, in his work on constitutional law, justly says with reference to Madison's view upon bounties:

> Such a view may appear singular when contrasted with his support of a protective tariff as an indirect

> means of accomplishing an object nowhere enumerated in the Constitution. Whether money shall be raised by taxation and then laid out in bounties, or purchasers shall be compelled to pay a higher price to manufacturers than they would have to give abroad, would seem to be merely a question of form. (Hare's American Constitutional Law, 244.)

The question of the constitutionality of bounties was discussed by Mr. Hamilton in his report on manufactures, to which reference has already been made. (Works of Hamilton, vol. 3, p. 246.) Referring to the power of Congress to provide for them, Mr. Hamilton, on page 249, wrote as follows:

> A question has been made concerning the constitutional right of the Government of the United States to apply this species of encouragement; but there is certainly no good foundation for such a question. The national legislature has express authority "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare," with no other qualifications than that "all duties, imposts, and excises shall be uniform throughout the United States; and that no capitation or other direct tax shall be laid, unless in proportion to numbers, ascertained by a census or enumeration, taken on the principles prescribed in the Constitution," and that "no tax or duty shall be laid on articles exported from any State."
>
> These three qualifications excepted, the power to raise money is plenary and indefinite, and the objects to which it may be appropriated are no less comprehensive than the payment of the public debts and the providing for the common defense and general welfare. The terms "general welfare" were doubt-

less intended to signify more than was expressed or imported in those which preceded; otherwise, numerous exigencies incident to the affairs of a nation would have been left without a provision. The phrase is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted within narrower limits than the "general welfare;" and because this necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition.

It is, therefore, of necessity, left to the discretion of the national legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce are within the sphere of the national councils, as far as regards an application of money.

The only qualification of the generality of the phrase in question which seems to be admissible is this: That the object to which an appropriation of money is to be made be general, and not local, its operation extending, in fact or by possibility, throughout the Union, and not being confined to a particular spot.

No objection ought to arise to this construction, from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. A power to appropriate money with this latitude, which is granted, too, in express terms, would not carry a power to do any other thing not authorized in the Constitution, either expressly or by fair implication.

The question of the validity of bounties is thus as old as that of the protective tariff, and has been answered in the same way by constant legislative and executive action, in accordance with the views of that ablest of statesmen and jurists who penned the Report on Manufactures. There was a bounty provided in the first revenue law of 1789 on all salted and dried fish exported, which continued in force until the tariff of 1846 (1 Stats., 427). There was a bounty provided on the cod fisheries by the act of February 16, 1792 (2 Stats., 229). Its constitutionality was considered in the early Congresses (see 2d edition of Elliot's Debates, vol. 4, pages 426–428), where Mr. Madison argued strenuously against it, and yet it was passed and remained on the statute book until after Story wrote his work on the Constitution. (See Story on the Constitution, vol. 1, 991; act 16th of February, 1792, chapter 6; act of July 29, 1813, chapter 35, 3 Stats., 49, where all the acts respecting the bounties on fisheries are given down to 1846.)

The act of June 5, 1794, section 14, chapter 51, of the first session, Third Congress (1st Stats., 387), provided for a drawback on manufactured tobacco or snuff and refined sugar exported. The act of May 13, 1800, chapter 66, of the first session, Sixth Congress (2d Stats., 84), increased the drawback on sugar refined and on spirits distilled from molasses in the United States. This was repealed April 6, 1802. A drawback on refined sugar exported was reënacted July 24, 1813, chapter 21, first session, Thirteenth Congress (3d Stats., 36), and was repealed by the act of February 7, 1817, chapter 1.

The act of January 21, 1829, provided an additional drawback on sugar refined in the United States and ex-

ported therefrom, and the amount of 5 cents per pound was allowed; and it was provided that the drawback should continue in force until the exports of sugar should be equal to the imports of the same article. It would be useless to refer to, and to comment upon, the various statutes of the United States authorizing drawbacks upon articles exported which have continued in force to the present day. Every one of these acts is an act conferring a bounty on a particular industry. If a century's construction of the Constitution by Congress is binding on the courts, then the question of the power to tax for a bounty to particular industries is no longer an open one.

Said Senator Morgan, of Alabama, in the discussion of the tariff bill now in question with relation to a bounty provision:

> It is too late to dispute the power of Congress to encourage exports by advantages, drawbacks, bounties, and premiums. Our subscriptions to world's fairs and expositions, such as those of London, Paris, Sydney, Philadelphia, New Orleans, and Chicago, are justified, if at all, by the encouragement thus given to our export trade.
>
> * * * * *
>
> The drawback we give of 90 per cent. of sums already paid and covered into the Treasury on the importation of foreign material when it is manufactured and exported to foreign countries, is only a bounty paid out of the Treasury to our manufacturers to induce them to foster the export trade of the country. We call it drawback, but it is simply bounty. They pay the United States for the privilege of the so-called drawback by increasing our exports.

> The fisheries bounties that so long obtained were only questioned on grounds of policy. They were rightly questioned and happily withdrawn. Still we give them free salt, and we give the like privilege to packers of meat for foreign and domestic trade. We pay premiums to shipbuilders for speed in our war vessels and extend large abatements of revenue duties to shipbuilders who furnish vessels to sail under foreign flags. (Cong. Record, vol. 21, part 10, page 9592.)

As we have seen, bounties have not been confined to exports, and, so far as the principle which appellants seek to apply is concerned, there can be no distinction between an export bounty and one upon domestic productions, whether exported or not, because in both cases, the money is primarily paid to particular individuals to aid them in their private business.

Said Mr. Justice Miller, in *Loan Association* v. *Topeka* (20 Wall., 655), the case upon which appellants most rely

> It is undoubtedly the duty of the legislature which imposes or authorizes municipalities to impose a tax to see that it is not to be used for purposes of private interest instead of a public use, and the courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. *And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the Government, the objects for which taxes have been customarily and by long course of legislation levied, what objects or purposes have been considered necessary to*

the support and for the proper use of the Government, whether State or municipal. Whatever lawfully pertains to this and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use and proper for the maintenance of goo government, though this may not be the only criterion of rightful taxation.

A course of legislation and an acquiescence of the people as old as the Nation itself has sanctioned both direct and indirect bounties for the encouragement of those industries which are closely allied with national growth and national independence, as a public purpose and as within the power of Congress.

It is hardly necessary to argue that a construction of the constitution by Congress, contemporaneous with the adoption of that instrument and continuing to the present day, should be controlling with the courts. The principle has been too often announced by this court to require it. (See *Ware* vs. *The United States*, 4 Wall., 618; *The Laura*, 114 U. S., 411; *United States* vs. *Hill*, 120 U. S., 169.)

We have been discussing heretofore the validity of the bounty features of the sugar clause on the theory that provision of this sort was for the general welfare. There is another ground upon which it can be supported. All the authorities agree that the Government may recognize a moral obligation to any class of citizens by direct appropriation, though the claim is not based on strictly legal grounds. (See Cooley on Taxation, page 91, and cases cited in notes 1 and 2.)

Here was a case where citizens, by reason of heavy sugar duties which had existed for many years, had been induced to make large investments in the plant required for the production of sugars; and now it was proposed by Congress to remove the duties because the revenue which they produced was more than sufficient for the uses of the Government. The removal of duties would absolutely destroy fifty or sixty million dollars' worth of property invested in this industry and protected by the duties. To enable persons whose property would be thus injuriously affected to prepare for the change, the Government was under a moral obligation to reimburse them for their loss or to permit them by a bounty to continue the business until such time as the business might be self sustaining.

Mr. Webster, in his speech upon the tariff of 1846 (Works of Daniel Webster, vol. 5, pages 161, 187), referring to the discussion of the tariff question in 1817 and 1824 and to the opposition of Massachusetts to the tariffs of those years, to the change in her industries since then made necessary by them, and to the equity that Massachusetts had thereby acquired in a protective tariff by such a course of legislation, said:

> Were we to stand aloof from the occupations which others were pursuing around us? Were we to pick clean teeth on a constitutional doubt which a majority in the councils of the nation had overruled? No, sir; we had no option. All that was left us was to fall in with the settled policy of the country; because, *if any thing can ever settle the policy of the country or if any thing can ever settle the practical construction of the Constitution of the country, it must be these repeated decisions of Congress and enactments of successive laws*

conformable to these decisions. New England, then, did fall in. She went into manufacturing operations, not from original choice, but from the necessity of the circumstances in which the legislature of the country had placed her. And, for one, I resolved then, and have acted upon the resolution ever since, that, having compelled the Eastern States to go into these pursuits for a livelihood, the country was bound to fulfill the just expectations which it had inspired.

3.

CONCERNING THE RECIPROCITY CLAUSE.

3. The final attack of appellants is upon the reciprocity clause of the tariff act. The clause is as follows:

> SEC. 3. That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January, eighteen hundred and ninety-two, whenever and so often as the President shall be satisfied that the Government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just,

> and in such case and during such suspension duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country as follows, namely.

Then follows a list of duties to be imposed upon various kinds of sugar, molasses, coffee, tea, and hides.

The general proposition on which appellants rely, that Congress has no power to delegate its legislative power to the Executive, is conceded. But Congress may enact a law which is to take effect on the happening of some event. It may make the application of the law conditional on the existence of a state of fact. If it may do so, then it may also provide what shall determine the existence of that state of fact. To whom can the power to determine the fact more properly be left than to the Executive of the nation? Here Congress was making a reduction in the duty upon certain articles which would affect beneficially the trade of other countries. It wished to secure a reciprocal benefit from those countries in its own trade.

It was obviously inconvenient for Congress to determine, without much more investigation than it could give to the subject, what was the effect upon the sale of the productions of the United States and her trade by the tariff laws in other countries. In view of the possibility of a change in foreign tariffs which such legislation made likely and which it was intended to produce, it was impossible to forecast what tariffs would be reciprocally equal and reasonable. It was a case eminently proper for executive ascertainment and perhaps negotiation. Congress legis-

lated in the alternative. If the tariffs of the foreign countries are reciprocally reasonable and equal toward the productions of the United States or are made so, then their sugar, hides, coffee, and tea are to come in free; if the foreign tariffs are not so reciprocally equal and reasonable, then certain duties are to be imposed on the four articles from those countries. The President is required to determine whether the foreign tariffs are reciprocally equal and reasonable to merchandise of the United States or not, and when he determines that they are not, he must proclaim the fact, and the free list is suspended and duties are imposed.

Counsel argue that what the President is to determine under this reciprocity clause, is not a fact but only a matter of opinion. There is no ground for such a distinction. That duties of a foreign country are reciprocally unreasonable or unequal to the United States, is a fact exactly as it is that duties are imposed in that country. The only difference between the two facts is that the one is capable of more exact ascertainment than the other.

But there is no need to discuss the validity of such legislation, inasmuch as, at the beginning of the century, this court decided in favor of the validity of a statute which it is impossible to distinguish from the one under discussion. The non-intercourse act of March 1, 1809, which was revived by the act of May 1, 1810, provided that:

> The President of the United States be, and he hereby is, authorized, in case either France or Great Britain shall so revoke or modify her edicts as that they shall cease to violate the neutral commerce of the United States, to declare the same by proclama-

> tion, after which the trade suspended by this act, and by the act laying an embargo, etc., * * * may be renewed with the nation so doing.

In the case of *The Brig Aurora* (7 Cranch, 382) the court held that Congress had power to make the revival of the act depend upon a future event, and to direct that the event be made known by proclamation. Here the President was authorized to determine whether the modifications or revocations of the edicts of France or Great Britain were such that they would cease to violate the neutral commerce of the United States. This left to the President to decide a question quite as much a matter of opinion especially at that period, quite as much a subject for wide discussion and difference, as is the question under the present act whether the duties imposed by a foreign government, in view of the free introduction of coffee, sugar, hides, etc., into this country, are reciprocally unequal and unreasonable toward the United States. The case of the *Aurora* was decided in 1813. Since that time laws of a similar character, reposing similar powers and duties in the Executive, have always stood on the statute books, and the power has been exercised by many Presidents.

By section 4219 R. S., a duty at the rate of $2 per ton is levied upon all foreign vessels from any country into which vessels of the United States are not ordinarily permitted to enter and trade; but it is provided that such duties shall not be levied if the President "*shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished.*"

Under this section, which has been in force for one hundred years (1 Stat., 35), the President is to determine whether foreign tariffs operate to the disadvantage of the United States. Perhaps the learned counsel for appellants can point out a distinction between the power exercised by the President under this section for a century and the one conferred by the reciprocity clause of the tariff act We can not. We are unable to see that the question whether tariff laws work to the disadvantage of the United States is any less a matter of opinion than the question whether they are reciprocally unequal and unreasonable toward the United States.

Section 4228 of the Revised Statutes provides that—

> Upon satisfactory proof being given to the President by the government of any foreign nation that no discriminating duties of tonnage or imposts are imposed or levied in the ports of such nation upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States, or from any foreign country, the President may issue his proclamation declaring that the foreign discriminating duties of tonnage and impost within the United States are suspended.

The act from which this was revised was passed in 1828 (4 Stats., 308).

Similar power is conferred with regard to Canadian importations by section 4347.

By section 2493 the importation of neat cattle and the hides of neat cattle from any foreign country is prohibited, provided that the operation of the section is to be suspended as to any particular country or countries whenever

the Secretary of the Treasury shall officially determine and give the public notice that the importation will not tend to the introduction of disease among the cattle of the United States.

Section 2494 provides that the President, whenever in his judgment the importation of neat cattle and the hides of neat cattle may be made without danger of spreading contagious diseases among the cattle of the United States, may by proclamation declare the preceding section, prohibiting their importation, inoperative.

Under section 4228, and the acts from which it was revised, proclamations were issued by President Monroe (3 Stats., 792–794); by John Quincy Adams (4 Stats., 815); by Gen. Jackson (4 Stats., 819); by Mr. Van Buren (4 Stats., 820); by Mr. Arthur (23 Stats., 835); and by Mr. Cleveland (24 Stats., 2030).

It would be difficult to justify a construction of the Constitution and of the legislative power of Congress more forcibly than by this legislation and the executive action under it.

We are aware that there are many cases in which it has been held that the legislature has no power to make the operation of a law dependent upon the vote of the whole people of the state, and these decisions have been put upon the ground that such a provision is substituting, for the judgment of the legislature, the judgment of the people, and is therefore a delegation of legislative power. The subject will be found discussed in Cooley's Constitutional Limitations, 6th edition, 137.

The leading case supporting this view is *Barto* v. *Himrod* (8 N. Y., 483). There is, however, a conflict

of authority upon the point, and in a class of cases—*i. e.*, *State* v. *Parker* (26 Vt., 358); *Smith* v. *Janesville* (26 Wis., 291)—the fallacy of the reasoning in the first-mentioned authorities is forcibly and convincingly exposed. But it is hardly necessary to enter into a discussion of the differences between the courts in these cases, for the authorities, first above referred to, could not apply to the statute under discussion. There the operation of the act was made to depend upon the question whether the people by vote should approve the act. Here the operation of the act is not made to depend upon the fact of the President's approval of its provisions. The application of its alternatives is made to depend upon the judgment of the President as to whether or not there is an unjust and unreasonable discrimination against the United States in the tariff laws of the foreign nations. The President neither approves nor disapproves the act; he simply finds the fact upon which Congress has determined how the act shall apply. There is no interposition of the judgment of the President, between the decree of Congress and the enforcement of the act, as to the wisdom of the legislation.

Finally, we are met by the opposing counsel with the statement that the distinction between all previous cases where the President has been given power to suspend the operations of law and the present case, is that never before, has the President been intrusted with the taxing power, while under this reciprocity clause he may exercise that power in a manner only to be compared with that of the most absolute despots in history. We are not struck

with the force of this argument or distinction. It is not true: first, because under previous laws, to which we have referred, the effect of the proclamation of the President was to impose duties upon imports or ships. Thus, under the statute in question in the case of *The Aurora* (7 Cranch, 382), the effect of the proclamation was to lift the embargo and restore duties and the right to trade. The statement is untrue in the second place because the President is not given the taxing power by the present tariff act. Congress has taxed the articles on condition of the existence of a fact, which is left to the President to decide. The rule against the delegation of legislative power applies to legislative power of every kind, whether it be a tax, an embargo, or the denouncing of a crime. The case of *The Aurora* and the ancient and modern statutes, above referred to, are not in point to show and were not cited to show that any delegation of any legislative power is valid under the Constitution, but they were cited to show and do show that the conditional operation of statutes where the fact of the fulfillment of the condition is left to the executive to decide, is not a delegation of legislative power to him. A distinction based upon the character of any particular legislative power is, therefore, wholly irrelevant to the discussion.

We have thus considered the three objections to the validity of the assessments in the cases at bar; first, that the law under which they were made did not pass; second, that it is invalid because of the sugar-bounty clause, and, third, that it is invalid because of the reciprocity

clause. We have not dwelt upon the importance of sustaining a law whose validity so concerns the public welfare, because that must impress itself upon the court without suggestion from counsel. Opinions upon the policy of enacting the law, of course, have no weight in this discussion. We may, however, appeal to that sound public policy which will lead the court to sustain the law if possible, rather than to precipitate, upon all the departments of the Government, the confusion which is sure to follow the revival of an act supposed by the public and the Government to be dead a year ago, and the annulling of another act, on the faith of the validity of which, enormous sums of money have been collected by the Government, and equally large sums have been invested by private individuals.

WM. H. TAFT,
Solicitor-General.

APPENDIX.

On page 26 of the foregoing brief, reference was made to a list of the authorities by States upon the question whether the legislative journals could be used to impeach the completely enrolled act, duly recorded and authenticated. The list is as follows:

ALABAMA.

In Alabama it is held that the validity of the seeming acts may be inquired into, and the presumption from due enrollment overthrown by the journals.

Dew vs. *Cunningham*, 28 Ala., 471.
Jones vs. *Hutchinson*, 43 Ala., 721.
Moody vs. *The State*, 48 Ala., 115.
State vs. *Buckley*, 54 Ala., 599.
Harrison vs. *Gordy*, 57 Ala., 49.
Perry County vs. *Railroad Co.*, 58 Ala., 546.
Walker vs. *Griffith*, 60 Ala., 361.
Moog vs. *Randolph*, 77 Ala., 597.
Sayre vs. *Pollard*, 77 Ala., 608.
Abernathy vs. *The State*, 78 Ala., 411.
Stein vs. *Leeper*, 78 Ala., 517.
Hall vs. *Steele*, 82 Ala., 562.

ARKANSAS.

In Arkansas the journals control the enrolled act.

Burr vs. *Ross*, 19 Ark., 250.
Vinsant vs. *Knox*, 27 Ark., 266.
English vs. *Oliver*, 28 Ark., 317.

State vs. *Little Rock and C. R. R. Co.*, 31 Ark., 701.
Worthen, County Clerk, vs. *Badgett*, 32 Ark., 496.
Smithee vs. *Garth*, 33 Ark., 17.
State vs. *Crawford*, 35 Ark., 237.
Chicot County vs. *Davies*, 40 Ark., 200.
Smithee vs. *Campbell*, 41 Ark., 471.
Webster vs. *City of Little Rock*, 44 Ark., 536.
Davis vs. *Gaines*, 48 Ark., 370.
Dow vs. *Beidelman*, 49 Ark., 325.
Glidewell vs. *Martin*, 51 Ark., 559.

It is noticeable that in the last case and in two previous cases, the judges delivering the opinions intimate a wish that the English rule were in force.

CALIFORNIA.

In California the rulings have been various.

In *Fowler* vs. *Peirce* (2 Cal., 165) the court permitted oral evidence to be introduced to show that an act was approved by the governor after adjournment. This case was overruled in *Sherman* vs. *Story* (30 Cala., 253), where it was held that the enrolled act could not be impeached by the journals. This was followed in *People* vs. *Burt* (43 Cala., 560). After these two cases were decided a new constitution was adopted in California, under which the journals have been examined to impeach the enrolled bill.

County of San Mateo vs. *So. Pac. R. R. Co.*, 8 Sawyer, 238;
Weill vs. *Kenfield*, 54 Cala., 111.
Oakland Paving Co. vs. *Hilton*, 69 Cala., 481.
People vs. *Dunn*, 80 Cala., 211.

COLORADO.

In Colorado the journals control the enrolled act.

In re Roberts, 5 Col., 528.
Hughes vs. *Felton*, 11 Col., 489–492.

CONNECTICUT.

In Connecticut the journals can not be used to impeach the recorded act.

Eld vs. *Gorham*, 20 Conn., 8.

DAKOTA TERRITORY.

In *Territory* vs. *O'Connor* (5 Dak., 397) it was held that the certificate of the presiding officers to the passage of the bill would not be overthrown by the mere silence of the journals. The question of a conflict between the enrolled act and the journals was not considered.

DELAWARE.

We have found no cases in this State in which the question is raised.

FLORIDA.

In this State the journal may be resorted to to impeach the enrolled act.

State vs. *Brown*, 20 Fla., 407.
State vs. *Deal*, 4 So. Rep., 907; S. C., 24 Fla., 293.

GEORGIA.

So far as our examination has extended, there are no cases on the subject in Georgia.

IDAHO.

No cases found on the subject.

ILLINOIS.

In this State the journals control in any conflict between them and the enrolled act as to the validity thereof.

Spangler vs. *Jacoby*, 14 Ills., 297.
Turley vs. *Logan County*, 17 Ills., 151.
People vs. *Hatch*, 19 Ills., 283.
Prescott vs. *The Trustees, &c.*, 19 Ills., 324.

Supervisors vs. *The People*, 25 Ills, 183.
People vs. *Starne*, 35 Ills., 121.
Wabash R. R. Co. vs. *Hughes*, 38 Ills., 174.
Illinois Central R. R. Co. vs. *Wren*, 43 Ills., 77.
Bedard vs. *Hall*, 44 Ills., 91.
Grobe vs. *Cushman*, 45 Ills., 119.
People vs. *De Wolf*, 62 Ills., 253.
Hensoldt vs. *Petersburg*, 63 Ills., 157.
Ryan vs. *Lynch*, 68 Ills., 160.
Happel vs. *Brethauer*, 70 Ills., 166.
Miller vs. *Goodwin*, 70 Ills., 659.
Plummer vs. *The People*, 74 Ills., 361.
Larrison vs. *Railroad Co.*, 77 Ills., 11.
Binz vs. *Weber*, 81 Ills., 288.
People vs. *Loewenthal*, 93 Ills., 191.
Wenner vs. *Thornton*, 98 Ills., 156.
Burritt vs. *The Commissioners*, 120 Ills., 332.
Leach vs. *The People*, 122 Ills., 420.
South Ottawa vs. *Perkins*, 94 U. S., 260.
Walnut vs. *Wade*, 103 U. S., 683.
Ohio vs. *Frank*, 103 U. S., 697.
Post vs. *Supervisors*, 105 U. S., 667.

INDIANA.

In Indiana now, the journals do not control the enrolled act. Formerly they were consulted for the purpose of impeaching the act. The journals were referred to in—

Skinner vs. *Deming*, 2 Ind., 560.
Coleman vs. *Dobbins*, 8 Ind., 156.
McCulloch vs. *The State*, 11 Ind., 430.
Coburn vs. *Dodd*, 14 Ind., 347.

The rule was changed and the enrolled act held conclusive of its valid passage.

Evans vs. *Browne*, 30 Ind., 514.
Bender vs. *The State*, 53 Ind., 254.
Edger vs. *The Commissioners*, 70 Ind., 331.
State vs. *Denny*, 21 N. E. Reporter, 274.

IOWA.

In Iowa the enrolled act in the secretary of state's office is held to be the ultimate proof of the law.

Clare vs. *The State*, 5 Iowa, 510.
Duncombe vs. *Prindle*, 12 Iowa, 1.

Where the validity of a constitutional amendment was in question, as different provisions of the constitution applied, it was held that the journals could be consulted.

Koehler & Lange vs. *Hill*, 60 Iowa, 543.

KANSAS.

In Kansas the enrolled act is controlled by the journals.

Haynes vs. *Heller*, 12 Kans., 384, reporter's note.
Division of Howard County, 15 Kans., 194.
Commissioners vs. *Higginbotham*, 17 Kans., 62.
In re Prohibitory Amendment, 24 Kans., 700.
State vs. *Francis*, 26 Kans., 724.
In re Vanderberg, 28 Kans., 243.
Weyand vs. *Stover*, 35 Kans., 545.
Kansas vs. *Robertson*, 41 Kans., 200.

KENTUCKY.

In Kentucky the question has not been squarely decided whether the journals in a conflict would overcome the presumption of the enrolled act, but the intimations of the court are that it would.

Commonwealth vs. *Jackson*, 5 Bush, 680.
Auditor vs. *Haycraft*, 14 Bush, 284.

LOUISIANA.

In this State it is held that the enrolled act is conclusive.

The Louisiana State Lottery Co. vs. *Richoux*, 23 La. An., 743.
Whited vs. *Lewis*, 25 La. An., 568.

MAINE.

In this State the enrolled act is held to be the best evidence, and not to be overcome by the journals where its record is complete.

Weeks vs. *Smith*, 81 Me., 538.

MARYLAND.

In this State the enrolled act was at first held to be conclusive. Afterwards the decisions are that it may be impeached by the journals. The first series of cases is:

Fouke vs. *Fleming*, 13 Md., 412.
Mayor, etc., of Annapolis vs. *Harwood*, 32 Md., 471.

Under a new constitution the following cases held that the enrolled act might be impeached by the journals and other evidence:

Berry vs. *Baltimore and Drum Point R. R. Co.*, 41 Md., 446.
Legg vs. *Mayor*, 42 Md., 203.
Strauss vs. *Heiss*, 48 Md., 292.

MASSACHUSETTS.

In this State no cases have been found bearing on the subject.

MICHIGAN.

In this State the enrolled act is controlled by the entries on the journals.

Southwark vs. *Palmyra and Jackson R.R.*, 2 Gibbs, 287.
Green vs. *Graves*, 1 Douglass, 351.
Hurlbut vs. *Britain*, 2 Douglass, 191.

People vs. *Mahaney*, 13 Mich., 481.
People vs. *The Supervisors of Onondaga*, 16 Mich., 254.
Steckert vs. *East Saginaw*, 22 Mich., 104.
Pack vs. *Barton*, 47 Mich., 520.
Attorney-General vs. *Joy*, 55 Mich., 94.
Callaghan vs. *Chipman*, 59 Mich., 610.
Attorney-General vs. *Rice*, 64 Mich., 385.
People ex rel. Hart vs. *McElroy*, 72 Mich., 446.
Sackrider vs. *Board of Supervisors of Saginaw Co.*, 79 Mich., 59.
Stow vs. *Grand Rapids*, 79 Mich., 595.
Rode vs. *Phelps*, 80 Mich., 598.
Caldwell, treasurer, vs. *Ward*, 83 Mich., 13.
People ex rel. Att'y Gen'l vs. *Burch*, 84 Mich., 408.

MINNESOTA.

In this State it is held that the journals control the enrolled act.

Supervisors vs. *Heenan*, 2 Minn., 330.
State vs. *Hastings*, 24 Minn., 78.
Burt vs. *Winona, &c., R. R. Co.*, 31 Mich., 472.
Minnesota vs. *Peterson*, 38 Minn., 143.
Lincoln vs. *Haugan*, 45 Minn., 451.

MISSISSIPPI.

In this State the enrolled act is held conclusive. In one case a different rule was laid down, namely, in the case of *Brady* vs. *West*, 50 Miss., 68. The case was overruled. The following cases hold the law conclusive:

Green vs. *Weller*, 32 Miss., 650.
Green vs. *Weller*, 33 Miss., 735.
Swann vs. *Buck*, 40 Miss., 268.
Ex parte Wren, 63 Miss., 512.

MISSOURI.

In this State the enrolled act was at first held conclusive, though where an amendment to the constitution was in question, the journals were consulted.

State vs. *McBride*, 4 Mo., 303.

The following case held the enrolled act to be conclusive:

Pacific R. R. vs. *Governor*, 23 Mo. 353.

Upon a change of the constitution the legislative journals have been allowed to impeach the recorded act.

Bradley vs. *West*, 60 Mo., 33.
State vs. *Mead*, 71 Mo., 266.

MONTANA.

In this State no cases have been found on the subject.

NEBRASKA.

In this State the journals are used to impeach the enrolled act.

Hall vs. *Miller*, 4 Neb., 503.
State vs. *Liedtke*, 9 Neb., 462.
Cottrell vs. *The State*, 9 Neb., 128.
Ballou vs. *Black*, 17 Neb., 389.
State vs. *McLelland*, 18 Neb., 236.
State ex rel. Poole vs. *Robinson*, 20 Neb., 96.
In re Groff, 21 Neb., 647.
State vs. *Van Duyn*, 24 Neb., 586.

NEVADA.

In this State the enrolled act is held conclusive.

State vs. Swift, 10 Nev., 176.
State vs. Rogers, 10 Nev., 250.
State vs. Glenn, 18 Nev., 39.

In *State ex rel. Stevenson* vs. *Tufly* (19 Nev., 391), where the constitution required an amendment to be entered in full on the journals, an amendment was held invalid because the requirement was not complied with.

NEW HAMPSHIRE.

In this State the enrolled act is controlled by the journals.

Opinions of the justices, 35 N. H., 579.
Do. 45 N. H., 607.
Do. 52 N. H., 622.

NEW JERSEY.

In this State the enrolled act is held to be the most appropriate evidence of the law, and is not overcome by inconsistent entries in the journals.

Pangborn vs. *Young*, 32 N. J. Law, 29.
Freeholders of Passaic vs. *Stevenson*, 46 N. J. Law, 173.
Standard Underground Cable Co. vs. *The Atty. Gen.*, 46 N. J. Equity, 270.

NEW YORK.

In New York the Revised Statutes (1 Rev. Stats., 187, sections 10 and 11) provided that the Secretary of State should receive the enrolled act, and should endorse upon it the day, month, and year when the same became a law, and that his certificate should be conclusive of the facts stated therein. There was also a provision that no bill should be deemed to be passed by the assent of two-thirds of the members, unless the fact was certified by the presiding officer of each house. The question arose in a number of cases whether certain acts had been passed which

were acts of incorporation and were required by the constitution of New York to be adopted by a two-thirds vote. It was held that for the purpose of ascertaining the vote, recourse might be had to the original enrolled act on file in the Secretary of State's office, and that the absence of the certificate of the presiding officers to a two-thirds vote avoided the act.

Thomas vs. *Dakin*, 22 Wendell, 9.
Warner vs. *Beers*, 23 Wendell, 125.
Hunt vs. *Van Alstyne*, 25 Wendell, 605.
People vs. *Purdy*, 2 Hill, 31.
Purdy vs. *The People*, 4 Hill, 384.
De Bow vs. *The People*, 1 Denio, 14.
Commercial Bank vs. *Sparrow*, 2 Denio, 97.

It was also stated by one or two judges in a semble—

Warner vs. *Beers*, 23 Wendell, 125.
People vs. *Purdy*, 4 Hill, 384.
De Bow vs. *The People*, 1 Denio, 14.

that the journals might also be examined, but these dicta have not been followed. The present law in New York is that the journals can not be consulted to determine whether an act has been passed by the requisite vote.

People vs. *Supervisors*, 8 N. Y., 317–327, 328.
People vs. *Devlin*, 33 N. Y., 269–283.
People vs. *The Commissioners*, 54 N. Y., 276.

In the case of *The People* vs. *Petrea*, 92 N. Y., 128 where the constitution required that all acts, like the act in question, to be valid must be reported by a commission, it was held that the journal might be resorted to to show that the act was not reported by the commission. This view grew out of a peculiar provision of the constitution, and does not take New York out of the line of those States which hold that the enrolled act can not be impeached by entries upon the journals.

NORTH CAROLINA.

In North Carolina it is held that the enrolled act is conclusive.

Broadnax vs. *Groom*, 64 N. C., 244.
State ex rel. Scarborough vs. *Robinson & Moring*, 81 N. C., 409.

OHIO.

In this State the journals are permitted to control the enrolled act.

State vs. *Moffitt*, 5 Ohio, 358.
Miller vs. *The State*, 3 Ohio St., 475.
Fordyce vs. *Godman*, 20 Ohio St., 1.
Herron vs. *Smith*, 44 Ohio St., 348.
State vs. *Kiesewetter*, 45 Ohio St., 254.

OREGON.

In this State the journals control the enrolled act.

Mumford vs. *Sewall*, 11 Ore., 67–71.
State vs. *Wright & Harris*, 14 Oregon, 365.

PENNSYLVANIA.

In this State, while the question is not clearly settled the tendency of the decisions is towards the conclusiveness of the enrolled act.

Speer vs. *The Plank Road Co.*, 22 Pa. St., 376.
Southwark Bank vs. *The Commonwealth*, 26 Pa. St., 446.
Kilgore vs. *Magee*, 85 Pa. St., 412.
Commonwealth vs. *Martin*, 107 Pa. St., 185.

In *Southwark Bank* vs. *The Commonwealth*, the journals were consulted to determine which of two bills passed first.

In *Commonwealth* vs. *Martin*, the presiding judge of the lower court declined to look into the journals, following *Pangborn* vs. *Young*, and the case was decided by the supreme court without examining the journals.

RHODE ISLAND.

In this State we have found no cases on the subject.

SOUTH CAROLINA.

In this State the journals are permitted to control the presumption from the enrolled act.

State vs. *Platt*, 2 S. C., 150.
State vs. *Smalls*, 11 S. C., 262.
Bond Debt Cases, 12 S. C., 200.
State vs. *Haigood*, 13 S. C., 46.

TENNESSEE.

In Tennessee the journals are permitted to control the presumption from the enrolled act.

State vs. *McConnell*, 3 Lea, 332.
Gaines vs. *Horrigan*, 4 Lea, 608.
Williams vs. *The State*, 6 Lea 549.
Brewer vs. *Mayor*, 86 Tenn., 732.
State vs. *Algood*, 87 Tenn., 163.

TEXAS.

In Texas the enrolled act is held to be the best evidence and is not controlled by the journals.

Central Pacific R. R. Co. vs. *Hearne*, 32 Tex., 546.
Blessing vs. *Galveston*, 42 Tex., 641.
Houston, etc., R. R. Co. vs. *Odum*, 53 Tex., 343.
Day, etc., Co., vs. *The State*, 68 Tex., 526.

Usener vs. *The State*, 8 Tex. Ap., 177.
Hunt vs. *The State*, 22 Tex. Ap., 396.
Ex parte Tipton, 28 Tex. Ap., 438.

In *Hunt* vs. *The State*, *supra*, the journals were examined, but *ex parte* Tipton practically overrules that case, and restores to authority *Usener* vs. *The State*, which held the enrolled act conclusive.

VERMONT.

In this State there in no decision by the supreme court of the State. Judge Prentiss, of the United States district court, *In the matter of Wellman* (20 Vermont, 656), expressed the opinion that the enrolled act was the only proper evidence, not only of its existence as a law, but of the time of its commencement, "though it may necessary and admissible in some instances, particularly when an act becomes a law by not being signed or returned with objections, or by being returned and repassed by Congress, to carry back the inquiry to the legislative journals."

VIRGINIA.

In this State the enrolled act is not conclusive, and the journals are permitted to control the presumption therefrom.

Wise vs. *Biggar*, 79 Va., 269.

WASHINGTON.

In this State we have found no cases on the subject.

WEST VIRGINIA.

In this State the enrolled act is controlled by entries upon the journals.

Osborn vs. *Staley*, 5 W. Va., 85.

WISCONSIN.

In this State the presumption from the enrolled act is controlled by the journals.

Watertown vs. *Cady*, 20 Wis., 501.
Bound vs. *The Railroad Co.*, 45 Wis., 543.
Meracle vs. *Down*, 64 Wis., 323.

WYOMING.

In this State the presumption from the enrolled act is controlled by the journals.

Brown vs. *Nash*, 1 Wyo., 85.
Union Pac. R. R. Co. vs. *Carr*, 1 Wyo., 96.

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In the Supreme Court of the United States.

OCTOBER TERM, 1891.

ROBERT M. BOYD ET AL.
vs.
THE UNITED STATES. } No. 1049.

CHARLES STERNBACH ET AL.
vs.
THE UNITED STATES. } No. 1050.

Appeals from the circuit court of the United States for the southern district of New York.

MARSHALL, FIELD & CO.
vs.
JOHN M. CLARK, COLLECTOR, ETC. } No. 1052.

Appeal from the circuit court of the United States for the northern district of Illinois.

APPENDIX TO BRIEF FOR THE UNITED STATES.

ABSTRACTS FROM JOURNALS, AND CERTIFIED COPY OF TARIFF ACT OF 1890.

[Containing all entries in the Journals of the House of Representatives and the Senate relating to the "Act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, known as "the McKinley act;" and certified copy of "McKinley act" as enrolled and deposited in the office of the Secretary of State, under Sec. 204, R. S., as amended by the act of December 28, 1874 (18 Stats., 294).]

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APPENDIX.

A.

JOURNAL OF THE HOUSE OF REPRESENTATIVES.

FIRST SESSION, FIFTY-FIRST CONGRESS.

WEDNESDAY, *April* 16, 1890.

* * * * * * * *

Mr. McKinley, as a privileged question, from the Committee on Ways and Means, reported a bill, accompanied by a report (No. 1466) in writing thereon; which said bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, was read twice, and with the accompanying report, referred to the Committee of the Whole House on the state of the Union.

Mr. Carlisle, on behalf of the minority of said committee, submitted their views in writing thereon.

Mr. McKenna, from the same committee, also submitted his views in writing thereon.

Ordered, That the said views of the minority and the said views of Mr. McKenna be printed with the said report. (H. J., p. 479.)

MONDAY, *April* 21, 1890.

* * * * * * * *

On motion of Mr. McKinley, by unanimous consent, 25,000 copies of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, together with the accompanying report (No. 1466) and the views of the minority on the said bill, were ordered to be printed. (Page 495.)

THURSDAY, *April* 24, 1890.

* * * * * * * *

The Speaker *pro tempore* having, by unanimous consent, laid before the House the following concurrent resolution of the House, viz:

Resolved by the House of Representatives (the Senate concurring), That there be printed 25,000 copies of House bill No. 9416, including the report of the committee and the views of the minority, in pamphlet form, 23,000 for the use of the House, to be distributed equally among the members, and 2,000 for the use of the Senate, with the following amendment by the Senate, viz:

Line 3, strike out "25" and insert "30;" line 7, strike out "23" and insert "26;" line 9, strike out "2" and insert "10."

And the House having proceeded to their consideration,

Mr. McKinley moved that the House concur in the said amendments; which motion was agreed to.

Ordered, That the Clerk acquaint the Senate therewith. (Page 521.)

WEDNESDAY, *May* 7, 1890.

* * * * * * * *

On motion of Mr. McKinley the House resolved itself into the Committee of the Whole House on the state of the Union, for the consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and after some time spent therein, the Speaker resumed the chair and Mr. Payson reported that the committee, having had under consideration the said bill, had come to no resolution thereon.

Mr. McKinley, by unanimous consent, moved that the House take a recess until 8 o'clock p. m., the evening session to be for debate only on the said bill of the House (H. R. 9416). (Page 580.)

* * * * * * *

AFTER THE RECESS (8 O'CLOCK P. M.).

* * * * * * *

On motion of Mr. McKinley, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein the Speaker *pro tempore* resumed the chair, and Mr. Grosvenor reported that the committee, having had under consideration the said bill, had come to no resolution thereon. (Page 580.)

THURSDAY, *May* 8, 1890.

AFTER THE RECESS (8 O'CLOCK P. M.).

On motion of Mr. McKinley, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein the Speaker *pro tempore* resumed the chair, and Mr. Hopkins reported that the committee, having had under consideration the said named bill, had come to no resolution thereon. (Page 585.)

FRIDAY, *May* 9, 1890.

* * * * * * *

On motion of Mr. McKinley, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein the Speaker resumed the chair, and Mr. Payson reported that the committee, having had under consideration the said named bill, have come to no resolution thereon.

* * * * * * *

On motion of Mr. Cannon, the House again resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the said bill (H. R. 9416), and after some time spent therein, the committee rose informally to receive a message from the Senate. (Mr. Morrow in the chair.)

* * * * * * *

The Committee of the Whole House on the state of the Union resumed the consideration of the said bill, H. R. 9416, and after some time spent therein the Speaker resumed the chair, and Mr. Payson reported that the committee, having had under consideration the said bill, had come to no resolution thereon.

* * * * * * *

Mr. McKinley moved that the House take a recess until 8 o'clock p. m., the evening session to be for debate only on the said bill of the House, H. R. 9416.

* * * * * * *

AFTER THE RECESS (8 O'CLOCK P. M.).

On motion of Mr. McKinley, the House resolved itself into the Committee of the Whole House on the state of the Union, for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein the Speaker *pro tempore* resumed the chair, and Mr. Morrow reported that the committee, having had under consideration the said named bill, had come to no resolution thereon. (Page 589.)

SATURDAY, *May* 10, 1890.

* * * * * * *

On motion of Mr. McKinley, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other pur-

poses, and after some time spent therein the committee rose informally to receive a message from the Senate (Mr. Blount in the chair).

* * * * * * *

The Committee of the Whole House on the state of the Union resumed the consideration of the said bill (H. R. 9416), and after some time spent therein the Speaker resumed the chair, and Mr. Grosvenor reported that the committee, having had under consideration the said named bill, had come to no resolution thereon.

* * * * * * *

AFTER THE RECESS (8 O'CLOCK P. M.).

* * * * * * *

On motion of Mr. McKinley, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and after some time spent therein the Speaker *pro tempore* resumed the chair, and Mr. Grosvenor reported that the committee, having had under consideration the said named bill, had come to no resolution thereon. (Page 593.)

MONDAY, *May* 12, 1890.

* * * * * * *

Mr. McKinley moved that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes.

Pending which (Journal H. R., p. 595.)

Mr. McKinley, by unanimous consent, moved that general debate on said bill be limited to one minute.

Mr. McKinley demanded the previous question.

And the question being put,

Shall the previous question be now ordered?

There appeared, on division, yeas 51, nays 49.

Mr. McMillin made the point of no quorum:

When,

Mr. McKinley moved a call of the House; which motion was agreed to.

The Clerk thereupon proceeded to call the roll, * * * [196 members failed to answer to their names.]

The following-named members appeared during the call, after their names had been called, and under clause 2 of Rule XV were noted as present, viz:

[Here follows list of 39 members.]

Mr. Wheeler, of Alabama, made the point of order that there had been only one call of the roll, and that general parliamentary law should govern where the rules of the House are indefinite, Jefferson's Manual providing that—

"On a call of the House, each person rises up as he is called and answereth. The absentees are then only noted, but no excuse to be made till the House be fully called over. Then the absentees are called a second time, and, if still absent, excuses are to be heard."—*Ord. House of Commons*, 92.

The Speaker overruled the said point of order, on the ground that the rule expressly states what shall be done; and, no quorum having responded to the roll-call, directed the Clerk to call the roll of absentees for excuses.

And then,

The Speaker having stated that the proceedings disclosed the presence of 168 members, more than a quorum,

Mr. McKinley moved that all further proceedings under the call be dispensed with; which motion was agreed to.

The question recurring on the motion of Mr. McKinley for the previous question,

And being put, viz:

Shall the previous question be now ordered?

It was decided in the affirmative, { Yeas ..... 111 / Nays ..... 98 / Not voting 128

The yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are,

[List of 111 members.]

Those who voted in the negative are,

[List of 88 members.]

Those not voting are,

[List of 128 members.]

So the previous question was ordered.

The question then recurring on the motion to limit general debate on the said bill to 1 minute,

And being put, viz,

Will the House agree thereto?

It was decided in the affirmative,

Yeas	123
Nays	95
Not voting	109

[Then follows list of members as to their respective votes.]

So the motion was agreed to. (H. R. Journal, pp. 596.)

The question then recurring on the motion of Mr. McKinley that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the said bill, H. R. 9416.

And being put,

It was decided in the affirmative,

Yeas	126
Nays	103
Not voting	98

The yeas and nays being desired by one-fifth of the members present.

[Then follow lists of those who voted in the affirmative, and in the negative, and those not voting.]

So the House decided to go into the Committee of the Whole House on the state of the Union for the further consideration of the said named bill, H. R. 9416;

* * * * * * *

The House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the said bill (H. R. 9416) and after some time spent therein the committee rose informally to receive a message from the Senate (the Speaker in the chair). (Page 597.)

* * * * * * *

And then

The committee resumed the consideration of the said named bill (H. R. 9416), and after some time spent therein, the Speaker resumed the chair, and Mr. Payson reported that the committee, having had under consideration the said named bill, had come to no resolution thereon. (Page 599.)

THURSDAY, *May* 15, 1890.

* * * * * * *

Mr. McKinley, as a privileged question, from the Committee on Rules, to which was referred the following resolution, viz:

Resolved, That on Saturday, May 10, at the close of the legislative day, the general debate on the bill (H. R. 9416) "to reduce the revenue and equalize duties on imports, and for other purposes," shall terminate; that on Monday, May 12, at 11 o'clock a. m., the House will proceed in Committee of the Whole to consider said bill by paragraphs, under the five-minute rule, and that the consideration of said bill shall be continued daily until Monday, May 19, at 4 o'clock p. m., at which time the bill and pending amendments shall be reported to the House,

reported the following substitute therefor, viz:

Resolved, That after the passage of this resolution the House shall assemble at 11 o'clock a. m. on each legislative day. That immediately after the reading of the Journal and the consideration of conference reports and House bills with Senate amendments the House shall resolve itself into Committee of the Whole House on the state of the Union to consider House bill 9416, to reduce the revenue and equalize duties on imports, and for other purposes. That said bill shall be read through, commencing with paragraph 111, and shall then from day to day be open to amendment upon any part thereof following paragraph 110. That on Wednesday, May 21, at 12 o'clock m., said bill with all amendments recommended by the Committee of the Whole House on the state of the Union shall be reported to the House.

The House having proceeded to their consideration, and the question being on agreeing to the substitute,

After debate,

Mr. McKinley demanded the previous question,

Pending which,

Mr. Breckinridge, of Kentucky, moved to lay the said substitute on the table;

And the question being put,

Shall the said substitute lie on the table?

It was decided in the negative,

Yeas	110
Nays	148
Not voting	69

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are,

[Then follow lists of those who voted affirmatively, those who voted negatively, and of those who did not vote.] (Page 611-12.)

So the House refused to table the said substitute.
The question then recurring on ordering the question,
And being put,

It was decided in the affirmative, { Yeas ..... 134 / Nays ..... 105 / Not voting ..... 88 }

The yeas and nays being desired by one-fifth of the members present.
[Then follow lists of those who voted affirmatively, negatively, and of those not voting.]
So the previous question was ordered.

* * * * * * *

The question then being on agreeing to the said substitute reported by the Committee on Rules,
And being put,
Will the House agree to the said substitute?

It was decided in the affirmative, { Yeas ..... 128 / Nays ..... 94 / Not voting ..... 105 }

The yeas and nays being desired by one-fifth of the members present.
Those who voted in the affirmative are,
[Then follow lists of those voting affirmatively, negatively, and of those not voting.] (Page 612-13.)
So the said substitute was agreed to.

* * * * * * *

The House having proceeded to its consideration, the said resolution was agreed to.
And then,
The House, under the order just adopted, resolved itself into the Committee of the Whole House on the state of the Union, for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize the duties on imports, and for other purposes; and after some time spent therein, the Speaker resumed the chair, and Mr. Grosvenor reported that the committee, having had under consideration the said named bill, had come to no resolution thereon. (Page 613.)

* * * * * * *

FRIDAY, *May* 16, 1890.

* * * * * * *

The Speaker stated that under the order adopted on yesterday the House would now resolve itself into the Committee of the Whole House on the state of the Union, for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein, the committee rose informally to receive a message from the Senate (the Speaker in the chair). (Page 617.)

* * * * * * *

The committee resumed the consideration of the said-named bill (H. R. 9416) and, after some time spent therein, the Speaker resumed the chair, and Mr. Grosvenor reported that the committee, having had under consideration the said bill, had come to no resolution thereon. (Page 618.)

SATURDAY, *May* 17, 1890.

* * * * * * *

The Speaker announced that, in accordance with the resolution heretofore adopted, the House would now resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein, the committee rose informally to receive a message from the Senate (Mr. Thompson in the chair). (Page 623.)

MONDAY, *May* 19, 1890.

* * * * * * *

The Speaker announced that, in accordance with the order heretofore adopted, the House would resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein, the committee rose informally to receive a message from the Senate (Mr. Houk in the chair). (Page 631.)

TUESDAY, *May* 20, 1890.

* * * * * * *

The Speaker announced that, in accordance with the resolution heretofore adopted, the House would resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416), to reduce the revenue and equalize duties on imports, and for other purposes; and after some time spent therein, the Speaker resumed the chair and Mr. Grosvenor reported that the committee, having had under consideration the said named bill (H. R. 9416), had come to no resolution thereon.

On motion of Mr. McMillin, by unanimous consent, general leave was granted to print in the Record amendments proposed to be offered to said bill. (Page 637.)

WEDNESDAY, *May* 21, 1890.

* * * * * * *

And then,

The Speaker announced that, in accordance with the order heretofore adopted, the House would resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and, after some time spent therein, the hour of 12 o'clock m. having arrived, the Speaker resumed the chair, and Mr. Grosvenor reported that the committee, having had under consideration the said named bill, H. R. 9416, he reported the same back, under the order of the House, with amendments thereto.

Mr. McKinley demanded the previous question on the engrossment, third reading, and passage of the said bill, with the amendments, as reported by the Committee of the Whole House on the state of the Union.

And the question being put, viz:

Shall the previous question be now ordered?

It was decided in the affirmative, { Yeas ..... 161 / Nays ..... 143 / Not voting 23

The yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are,

[Then follow lists of those voting in the affirmative, those voting in the negative, and those not voting.]

So the previous question was ordered, and under the operation thereof the said named amendments were read and severally agreed to, excepting those on which a division was demanded.

The question then being on agreeing to the following amendment, viz:

On page 26, in line 21, after the word "ninety-one," strike out all down to the end of the paragraph in line 3, on page 27, and insert the following:

All iron or steel sheets or plates or tagger's iron coated with tin or lead or with a mixture of which these metals is a component part, by the dipping or any other process, and commercially known as tin plates, terneplates, and tagger's tin, shall pay 2.2 cents per pound: Provided, That on and after July 1, 1891, *manufactures of which tin plates, terneplates, and tagger's tin are component material of chief value, and all articles, vessels, or wares manufactured, stamped, or drawn from sheet-iron or sheet steel, such material being component of chief value, and coated wholly or in part with tin or lead or a mixture of which these metals or either of them is a component part, shall pay, in addition to the rate of duty upon tin plates, terneplates, and tagger's tin, an ad valorem duty of* 35 *per cent.*

And being put, viz:

Will the House agree thereto?

It was decided in the affirmative, { Yeas ..... 150 / Nays ..... 140 / Not voting 28

The yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are,

[Then follow lists of those voting in the affirmative, those voting in the negative, and those not voting.]

So the amendment was agreed to.

The question next being on agreeing to the following amendment, viz:

In paragraph 360, line 9, strike out the words "sisal or manilla" and insert the word *five* after "thirty."

And being put, viz:

Will the House agree thereto?

It was decided in the negative, { Yeas ..... 143 / Nays ..... 147 / Not voting 37

The yeas and nays being desired by one-fifth of the members present,
Those who voted in the affirmative are,
[Then follow lists of those voting in the affirmative, those voting in the negative, and those not voting.] (Pages 640, 641, 642.)
So the amendment was rejected.
The question next being on agreeing to the following amendment, viz:
Page 77, paragraph 377, line 9, after the word "Smyrna," insert the words *Russian camels' hair,*
And being put, viz:
Will the House agree thereto?

It was decided in the affirmative, { Yeas ..... 143 / Nays ..... 138 / Not voting 46

The yeas and nays being desired by one-fifth of the members present,
Those who voted in the affirmative are,
[Then follow lists of those voting in the affirmative, and in the negative, and not voting.]
So the amendment was agreed to.
The question next being on agreeing to the following amendment, viz:
In line 24, paragraph 390, strike out the word "twice" and insert in lieu thereof the words *two and one-half times*;
And being put, viz:
Will the House agree thereto?

It was decided in the negative, { Yeas ..... 137 / Nays ..... 148 / Not voting 42

The yeas and nays being desired by one-fifth of the members present,
Those who voted in the affirmative are,
[Then follow the names of those voting affirmatively, negatively, and those not voting.]
So the amendment was rejected.
The question next being on the agreeing to the following amendment, viz:
In paragraph 391, page 81, line 16, strike out the word "twice" and insert in lieu thereof the words *three times,*
And being put, viz:
Will the House agree thereto?

It was decided in the negative, { Yeas ..... 143 / Nays ..... 146 / Not voting 38

The yeas and nays being desired by one-fifth of the members present,
Those who voted in the affirmative are,
[Here follow lists of those voting affirmatively, those voting negatively, and those not voting.]
So the amendment was rejected.
The question next being on agreeing to the following amendment, viz:
Page 89, paragraph 415, at the end of line 23, add:
Provided, That all such manufactures, of which wool, or the hair of the camel, goat, or other like animals is a component material, shall be classified as manufactures of wool,
And being put, viz:
Will the House agree thereto?

It was decided in the affirmative, { Yeas ..... 155 / Nays ..... 143 / Not voting 29

The yeas and nays being desired by one-fifth of the members present,
Those who voted in the affirmative are,
[Here follow lists of those who voted in the affirmative, those who voted in the negative, and of those not voting.] (Pages 642–3–4.)
So the amendment was agreed to.
The question next being on agreeing to the following amendment, viz:
Strike out section 32, on page 143, and substitute the following:
Sec. 32. That the Commissioner of Internal Revenue shall assign one or more internal-revenue storekeepers and gaugers to every vinegar factory employing the vaporizing process, and lawfully established under this act, to have charge of such factory, under the direction of the collector of the district, and may transfer such officer or officers from any such vinegar factory or bonded or distillery warehouse to another. And there shall be levied and collected on each proof gallon, or fraction thereof, of distilled spirits or low wines produced in such a vinegar factory, to be paid by the proprietor of such factory, a tax of 5 cents, which tax shall be assessed monthly by the Commissioner of Internal Revenue, and shall be a first lien on the spirits produced, the factory, the stills, vessels, fixtures, and tools therein,

and the lot or tract of land on which the factory is situated, from the time the spirits are in existence until the said tax is paid.

Sec. 33. That section 3282 of the Revised Statutes of the United States, as amended by section 5 of the act of March 1, 1879, be amended by striking out all after said number and inserting the following:

*"No mash, wort, or wash, fit for distillation or for the production of spirits or alcohol, shall be made or fermented in any building or on any premises other than a distillery duly authorized according to law; and no mash, wort, or wash so made and fermented shall be sold or removed from any distillery before being distilled; and no person other than an authorized distiller shall by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash; and no person shall use spirits or alcohol * * * in manufacturing vinegar or any other article, or in any process of manufacture whatever, unless the spirits or alcohol so used shall have been produced in an authorized distillery and the tax thereon paid. Every person who violates any provision of this section shall be fined for each offense not less than $500 nor more than $5,000, and be imprisoned not less than six months nor more than two years: Provided, That nothing in this section shall be construed to apply to fermented liquors, or to fermented liquids used for the manufacture of vinegar exclusively. * * * But it shall be lawful for manufacturers of vinegar to separate, by a vaporizing process, the alcoholic property from the mash produced by them, and condense the same by introducing it into the water or other liquid used in making vinegar.*

"But no worm, goose neck, pipe, conductor, or contrivance of any description whatsoever whereby vapor might in any manner be conveyed away or converted into distilled spirits of high proof shall be used or employed or be fastened to or connected with any vaporizing apparatus used for the manufacture of vinegar; nor shall any worm be permitted on or near the premises where such vaporizing process is carried on.

"Nor shall any vinegar factory for the manufacture of vinegar as aforesaid, be permitted within 600 feet of any distillery or rectifying house.

"The manufacturer shall erect in a room or building to be provided and used for that purpose, one or more receiving cisterns of sufficient capacity to hold all the the low wines or distilled sprits produced during the day of twenty-four hours, into which shall be conveyed the entire product of each day, the cistern and cistern room to be constructed in the manner to be prescribed by the Commissioner of Internal Revenue. Such cisterns and the room in which they are contained shall be in charge and under lock and seal of the storekeeper and gauger; and all locks and seals requisite for that purpose shall be provided by the Commissioner of Internal Revenue at the expense of the United States.

"On and before the third day after the spirits or low wines are conveyed into such cisterns they shall be drawn off under the supervision of the storekeeper and gauger, but before the same are drawn off, or any part thereof, they shall be gauged and proved by the storekeeper and gauger, who shall ascertain and report to the collector of the district, in such manner as shall be prescribed by the Commissioner of Internal Revenue, the quantity of such spirits or low wines in wine and proof gallons.

"It shall be unlawful to manufacture any distilled spirits or low wines in any vinegar factory of a greater strength than 30 per cent. of proof spirits; and any spirits or low wines of a greater strength produced in a vinegar factory shall be forfeited to the United States, together with all the stills, tools, machinery, utensils, materials, spirits, or low wines and vinegar on the premises of such factory.

"No person shall remove, or cause to be removed, from any vinegar factory or place where vinegar is made any vinegar or other fluid or material containing a greater proportion than 2 per cent. of proof spirits. Any violation of this provision shall incur a forfeiture of the vinegar, fluid, or material containing such proof spirits, and shall subject the person or persons guilty of removing the same to the punishment provided for any violation of this section.

"And all the provisions of sections 3276, 3277, 3278, of the Revised Statutes of the United States are hereby extended and made applicable to all premises wherein vinegar is manufactured, to all manufacturers of vinegar and their workmen and other persons employed by them."

Sec. 34. That every manufacturer of vinegar shall register his vaporizing apparatus with the collector of the district in the same manner as is now required concerning stills set up, to be subject to all the penalties provided in section 3258 of Revised Statutes of the United States for having in possession such an apparatus set up and not so registered.

Sec. 35. That every manufacturer of vinegar, before commencing or continuing business, shall give duplicate notice in writing, subscribed by him, to the collector of the district in which the business is to be carried on, stating his name and residence, and if a firm, company, or corporation, the name and the residence of each member thereof; the precise place where such business is to be carried on; a particular description of the premises to be occupied, and of the mash-tubs and fermenting-tubs, and of the vaporizing and condensing apparatus to be used by him; also whether the factory was established and operated as a vinegar factory prior to March 1, 1869, or not; the distance of said factory in a direct line from the nearest distillery or rectifying house; the day when the manufacturer will commence to operate, and all such additional particulars as the Commissioner of Internal

Revenue may from time to time prescribe; and every person failing to give such notice or giving a false or fraudulent notice shall be liable to the penalties provided in section 3259 of the Revised Statutes of the United States.

Sec. 36. That every manufacturer of vinegar shall, before commencing or continuing the business, and on the 1st day of May on each succeeding year, give a bond in the form prescribed by the Commissioner of Internal Revenue, conditioned that he shall faithfully comply with all provisions of law concerning the manufacture of vinegar by the use of alcoholic vapor.

Said bond shall be, with at least two sureties, approved by the collector of the district, and for a penal sum of $5,000. A new bond may be required in any contingency affecting the validity or impairing the efficiency of the previous bond, at the discretion of the collector or the Commissioner of Internal Revenue. Any manufacturer of vinegar as defined in this act who shall commence or continue the business after the passage of this act without giving such bond, or who fails or refuses to renew the same, or who gives any false, forged, or fraudulent bond, shall forfeit his factory and apparatus, and shall be fined not less than $500, nor more than $5,000, and imprisoned not less than six months nor more than two years.

Sec. 37. Every manufacturer of vinegar by the vaporizing process or person employed in such factory, who in the absence of the storekeeper or gauger, or person designated to act as storekeeper or gauger, uses or causes or permits to be used any material for the purpose of making mash, wort, or beer, or for the production of spirits or low wines, or removes any spirits or low wines, shall forfeit and pay a tax of 90 cents per proof gallon on the spirits so produced, distilled, or removed, and in addition thereto be liable to a penalty of $1,000.

Sec. 38. That every manufacturer of vinegar shall keep a book in the form prescribed by the Commissioner of Internal Revenue, in which he shall enter daily the kind and quality of all materials purchased by him and brought upon the premises to be used in the manufacture of vinegar, and from whom purchased, the kind and quality used each day, the quantity and strength of the vinegar manufactured, and the quantity sold or removed from the factory, and any other particulars that may from time to time be prescribed by the Commissioner of Internal Revenue. Said book shall be kept at the factory, shall be preserved for two years after the last entry is made therein, and shall constantly be open to the inspection of any revenue officer; and whenever any manufacturer of vinegar shall omit or refuse to provide said book, or to make the entries required to be made therein, or shall make any false and fraudulent entry therein, or shall fail to preserve said book for the period required, or shall not produce said book for the inspection of any revenue officer, with intent to defraud, the factory, apparatus, the vinegar manufactured or in process of manufacture, and all personal property on said premises used in the business there carried on shall be forfeited to the United States.

Sec. 39. The storekeepers assigned to vinegar factories shall keep, in a book to be provided for that purpose and in the manner prescribed by the Commissioner of Internal Revenue, a daily account of the kind and quantity of material brought upon the premises and used in the manufacture of vinegar, the quantity and strength of the vinegar made, and the quantity sold or removed from the factory, and shall enter in said book all other particulars, and keep such other records and make such reports of the operation of the factory as the Commissioner of Internal Revenue may require.

Sec. 40. That every package, cask, or barrel containing vinegar manufactured [page 644] *by the alcoholic vaporizing process shall have plainly marked thereon when it leaves the factory, and shall be so kept plainly marked while it contains such vinegar, the words "Spirit vinegar." Any person or persons manufacturing, selling, or having in possession for the purposes of sale any such vinegar contained in any package, cask, or barrel not so marked shall upon conviction thereof pay a fine of $5 for each and every such package, cask, or barrel, and in addition thereto shall pay the costs of prosecution.*

Sec. 41. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may make all such regulations, not inconsistent with the provisions of this act, as may be necessary to give full effect thereto.

And being put, viz:

Will the House agree thereto?

It was decided in the affirmative, { Yeas ..... 164 / Nays ..... 138 / Not voting 25

The yeas and nays being desired by one fifth of the members present.

Those who voted in the affirmative are.

[Then follow lists of those voting affirmatively, negatively, and not voting.]

So the amendment was agreed to.

The bill as amended was then engrossed and read the third time, and the question being on its passage.

Pending which,

Mr. Carlisle submitted the following resolution, viz:

Resolved, That the pending bill be recommitted to the Committee on Ways and Means, with instructions to report the same back to the House at the earliest possible

day, so amended by substitute or otherwise as to reduce the revenues of the Government by reducing the burdens of taxation upon the people, instead of reducing the revenues by imposing prohibitory rates of taxation upon imported goods.

The question being on agreeing to the said resolution,

Mr. McKinley demanded the previous question, which was ordered, and under the operation thereof,

The question was put, viz:

Will the House agree to the said resolution?

And it was decided in the negative,

Yeas	140
Nays	164
Not voting	23

The yeas and nays being desired by one-fifth of the members present.

Those who voted in the affirmative are,

[Then follow lists of those voting affirmatively, negatively, and not voting.] (Page 645.)

So the said resolution was disagreed to.

On motion of Mr. McKinley, by unanimous consent, the Clerk was directed to renumber the sections as made necessary by the insertion of new sections.

And then,

The question recurring on the passage of the said bill,

And being put, viz:

Shall the bill pass?

It was decided in the affirmative,

Yeas	164
Nays	142
Not voting	21

The yeas and nays being desired by one-fifth of the members present,

Those voting in the affirmative are—

Adams,	Culbertson, Pa.	La Follette,	Russell.
Allen, Mich.	Cutcheon,	Laidlaw,	Sanford,
Anderson, Kans.	Dalzell,	Lansing,	Sawyer,
Arnold,	Darlington,	Laws	Scranton,
Atkinson, Pa.	De Haven,	Lehlbach,	Scull,
Atkinson, W. Va.	De Lano,	Lind,	Sherman,
Baker,	Dingley,	Lodge,	Simonds,
Banks,	Dolliver,	Mason,	Smith, Ill.
Bartine,	Dorsey,	McComas,	Smith, W. Va.
Bayne,	Dunnell,	McCord,	Smyser,
Beckwith,	Evans,	McCormick,	Snider,
Belden,	Ewart,	McKenna,	Spooner,
Belknap,	Farquhar,	McKinley,	Stephenson,
Bergen,	Finley,	Miles,	Stewart, Vt.
Bingham,	Flick,	Milliken,	Stivers,
Bliss,	Flood,	Moffitt,	Stockbridge,
Boothman,	Frank,	Moore, N. H.	Struble,
Boutelle,	Funston,	Morey,	Sweney,
Bowden,	Gear,	Morrill,	Taylor, Ill.
Brewer,	Gest,	Morrow,	Taylor, Tenn.
Brosius,	Gifford,	Morse,	Taylor, Ezra B.
Brower,	Greenhalge,	Mudd,	Taylor, Joseph D.
Browne, Va.	Grosvenor,	Niedringhaus,	Thomas,
Browne, T. M.	Hall,	Nute,	Thompson,
Buchanan, N. J.	Hansbrough,	O'Donnell,	Townsend, Colo.
Burrows,	Hatmer,	O'Neill, Pa.	Townsend, Pa.
Burton,	Haugen,	Osborne,	Vandever,
Butterworth,	Henderson, Ill.	Owen, Ind.	Van Schaick,
Caldwell,	Henderson, Iowa	Payne,	Waddill,
Candler, Mass.	Hermann,	Perkins	Wade,
Cannon,	Hill,	Pickler,	Walker, Mass.
Carter,	Hitt,	Post,	Wallace, Mass
Caswell,	Hopkins,	Pugsley,	Wallace, N. Y.
Cheadle,	Houk,	Quackenbush,	Watson,
Cheatham,	Kelley,	Raines,	Wheeler, Mich.
Clark, Wis.	Kennedy,	Randall,	Wickham,
Cogswell,	Kerr, Iowa	Ray,	Williams, Ohio
Comstock,	Ketcham,	Reyburn,	Wilson, Ky.
Conger,	Kinsey,	Rife,	Wilson, Wash.
Cooper, Ohio	Knapp,	Rockwell,	Wright,
Craig,	Lacey,	Rowell,	Yardley,

Those who voted in the negative are—

Abbott,	Blount,	Bunn,	Clarke, Ala.
Alderson,	Boatner,	Bynum,	Clements,
Allen, Miss.	Breckinridge, Ark.	Campbell,	Clunie,
Anderson, Miss.	Breckinridge, Ky.	Candler, Ga.	Cobb,
Andrew,	Brickner,	Carlisle,	Coleman,
Barnes,	Brookshire,	Carlton,	Cooper, Ind.
Barwig,	Brown, J. B.	Caruth,	Covert,
Biggs,	Brunner,	Catchings,	Cowles,
Blanchard,	Buchanan, Va.	Chipman,	Crain,
Bland,	Buckalew,	Clancy,	Crisp,

Culberson, Tex.	Heard,	Morgan,	Stahlnecker,
Cummings,	Hemphill,	Mutchler,	Stewart, Ga.
Dargan,	Henderson, N. C.	Oates,	Stewart, Tex.
Davidson,	Herbert,	O'Ferrall,	Stone, Ky.
Dibble,	Holman,	O'Neill, Mass.	Stump,
Dockery,	Kerr, Pa.	Outhwaite,	Tarsney,
Dunphy,	Lanham,	Owens, Ohio	Tillman,
Edmunds,	Lee,	Parrett,	Tracey,
Elliott,	Lester, Ga.	Paynter,	Tucker,
Ellis,	Lester, Va.	Peel,	Turner, Ga.
Enloe,	Lewis,	Penington,	Turner, N. Y.
Featherston,	Magner,	Perry,	Turpin,
Fitch,	Maish,	Pierce,	Venable,
Fithian,	Mansur,	Price,	Washington,
Flower,	Martin, Ind.	Quinn,	Wheeler, Ala.
Forman,	Martin, Tex.	Reilly,	Whiting,
Forney,	McAdoo,	Richardson,	Whitthorne,
Fowler,	McCarthy,	Robertson,	Wike,
Geissenhainer,	McClammy,	Rogers,	Wilkinson,
Gibson,	McClellan,	Rowland,	Willcox,
Goodnight,	McCreary,	Rusk,	Williams, Ill.
Grimes,	McMillin,	Sayers,	Wilson, Mo.
Hare,	McRea,	Seney,	Wilson, W. Va.
Hatch,	Mills,	Shively,	Yoder,
Hayes,	Montgomery,	Skinner,	
Haynes,	Moore, Tex.	Springer,	

Those not voting are—

Bankhead,	Kilgore,	Peters,	Turner, Kans.
Bullock,	Lane,	Phelan,	Walker, Mo.
Connell,	Lawler,	Reed, Iowa	Wiley,
Cothran,	Norton,	Spinola,	
Groat,	O'Neall, Ind.	Stockdale,	
Hooker,	Payson,	Stone, Mo.	

Mr. McKinley moved to reconsider the vote last taken, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, That the Clerk request the concurrence of the Senate in said bill. (Page 646.)

* * * * * * *

FRIDAY, *September* 12, 1890.

* * * * * * *

A message from the Senate, by Mr. Johnson, their chief clerk:

Mr. Speaker: * * * The Senate have passed, with amendments, the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, ask a conference with the House thereon, and have appointed Mr. Aldrich, Mr. Sherman, Mr. Allison, Hr. Hiscock, Mr. McPherson, Mr. Vance, and Mr. Carlisle managers on the part of the Senate at said conference.

The Speaker announced that the said bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, with Senate amendments thereto, and a request for a conference thereon, on the Speaker's table, would be referred to the Committee on Ways and Means, and ordered to be printed. * * * (Page 1034.)

MONDAY, *September* 15, 1890.

Mr. McKinley, as a privileged question, from the Committee on Ways and Means, to which was referred the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, with amendments of the Senate thereto, and a request for a conference with the House thereon, reported the same with the recommendation that the House non-concur in all of the said amendments and agree to the said request for a conference.

The said bill, amendments, and request were referred to the Committee of the Whole House on the state of the Union.

Mr. McKinley, as a privileged question, from the Committee on Rules, to which was referred the following resolution, viz:

Resolved, That after the passage of this resolution the Committee of the Whole House on the state of the Union shall be discharged from the further consideration of House bill No. 9416, with Senate amendments thereto, and the same shall be considered in the House; that after —— hours of debate it shall be in order in the House to move to non-concur in the Senate amendments to said bill in gross, and agree to a committee of conference asked by the Senate on the disagreeing votes of the two Houses, and the House shall, without further delay, proceed to vote upon said motion; reported as a substitute therefor the following resolution, viz:

Resolved, That after the passage of this resolution the Committee of the Whole House on the state of the Union shall be discharged from the further consideration of House bill No. 9416, with Senate amendments thereto, and the same shall be considered in the House; that after two hours, general debate it shall be in order in the House to move to non-concur in the Sen

ate amendments to said bill in gross, and agree to a committee of conference as asked for by the Senate on the disagreeing votes of the two Houses, and the House shall, without further delay or other motion, proceed to vote upon said motion.

The House having proceeded to its consideration, and the question being on agreeing to the same,

Mr. McKinley demanded the previous question.

And the question being put, viz:

Shall the previous question be ordered?

It was decided in the affirmative, { Yeas ..... 116 / Nays ..... 70 / Not voting 139

The yeas and nays being desired by one fifth of the members present.

Those who voted in the affirmative are (page 1039).—

[Then follow lists of those voting affirmatively, negatively, and not voting.]

Mr. Dockery was on motion excused for the day.

So the previous question was ordered, and, under the operation thereof, the question recurring on agreeing to the said substitute,

After debate (40 minutes having expired), the question being put, viz:

Will the House agree to the said substitute?

It was decided in the affirmative, { Yeas ..... 114 / Nays ..... 72 / Not voting 139

The yeas and nays being desired by one-fifth of the members present.

Those voting in the affirmative are,

[Then follow lists of those who voted affirmatively, negatively, and not voting.]

So the said substitute was agreed to.

And then,

Under the provisions of the resolution just adopted the House proceeded to the consideration of the said bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, with amendments of the Senate thereto, and a request for a conference thereon.

Mr. McKinley moved that the House non-concur in all of the said amendments of the Senate to the said bill, and agree to the conference asked by the Senate on the said bill and amendments.

After debate on the said motion for two hours under and in accordance with the foregoing resolution reported from the Committee on Rules and adopted by the House,

And the question recurring on the said motion submitted by Mr. McKinley,

And being put,

It was decided in the affirmative, { Yeas ..... 120 / Nays ..... 82 / Not voting 123

The yeas and nays being desired by one-fifth of the members present.

Those voting in the affirmative are,

[Then follow lists of those voting affirmatively, negatively, and not voting.]

(Pages 1040–1041.)

So the said motion was agreed to.

Mr. McKinley moved to reconsider the vote last taken, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to. (Page 1041.)

TUESDAY, *September* 16, 1890.

* * * * * * * *

The Speaker announced the appointment of Mr. McKinley, Mr. Burrows, Mr. Bayne, Mr. Dingley, Mr. Mills, Mr. McMillin, and Mr. Flower as managers on the part of the House at the conference heretofore ordered on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes. * * * (Page 1047.)

FRIDAY, *September* 26, 1890.

* * * * * * * *

Mr. McKinley, as a privileged question, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, submitted the following report, viz:

The committee of conference, on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9416) "to reduce the revenue and equalize duties on imports, and for other purposes," having met, after full and free conference

have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 57, 58, 63, 85, 93, 98, 101, 104, 105, 108, 109, 132, 161, 164, 176, 191, 192, 193, 247, 248, 251, 293, 294, 295, 306, 322, 324, 335, 338, 348, 350, 354, 355, 357, 360, 381, 382, 395, 396, 397, 418, 421, 443, 444, 449, 481, 482, 483, 484, 487, 497.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 6, 7, 8, 9, 12, 14, 20, 21, 22, 24, 25, 30, 31, 32, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 56, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 91, 92, 99, 100, 102, 106, 107, 110, 111, 112, 113, 114, 119, 120, 121, 122, 127, 130, 131, 134, 135, 136, 137, 140, 141, 142, 143, 144, 145, 146, 147, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 179, 180, 182, 184, 185, 186, 187, 189, 195, 224, 225, 226, 227, 228, 229, 234, 238, 239, 240, 243, 244, 245, 246, 254, 261, 262, 263, 264, 265, 266, 267, 268, 270, 274, 275, 276, 277, 278, 280, 282, 283, 284, 285, 286, 287, 288, 289, 291, 296, 299, 300, 301, 304, 305, 307, 310, 316, 319, 321, 323, 326, 328, 332, 334, 336, 337, 339, 340, 342, 343, 347, 349, 351, 353, 358, 359, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 373, 374, 375, 376, 377, 378, 383, 384, 385, 386, 387, 389, 392, 393, 394, 398, 399, 400, 402, 403, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 419, 420, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 454, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 488, 489, 490, 492, 493, 496; and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows: Striking out the word "first," in line 1 of the bill, and inserting in lieu thereof the word *sixth;* and the Senate agree to the same.

Amendment numbered 5: That the House recede from its disagreement to the amendment of the Senate numbered 5, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof the following:

6. *Tannic acid or tannin, 75 cents per pound.*

And the Senate agree to the same.

Amendment numbered 10: That the House recede from its disagreement to the amendment of the Senate numbered 10, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof the following:

18. *All coal-tar colors or dyes, by whatever name known, and not specially provided for in this act, 35 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 11: That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

19. *All preparations of coal-tar, not colors or dyes, not specially provided for in this act, 20 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 13: That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

26. *Extracts and decoctions of logwood and other dye-woods, extract of sumac, and extracts of bark, such as are commonly used for dyeing or tanning, not specially provided for in this act, seven-eighths of 1 cent per pound; extracts of hemlock bark, one-half of 1 cent per pound.*

And the Senate agree to the same.

Amendment numbered 15: That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

28. *Glycerine, crude, not purified, 1¼ cents per pound; refined, 1½ cents per pound.*

And the Senate agree to the same.

Amendment numbered 16: That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

33. *Licorice, extracts of, in paste, rolls, or other forms, 5½ cents per pound.*

And the Senate agree to the same.

Amendments numbered 17, 18, and 19: That the House recede from its disagreement to the amendments of the Senate numbered 17, 18, and 19, and agree to the same with amendments striking out the paragraph and inserting in lieu thereof as follows:

36. *Alizarine assistant, or soluble oil, or oleate of soda, or Turkey red oil, containing 50 per cent. or more of castor oil, 80 cents per gallon; containing less than 50 per cent. of castor oil, 40 cents per gallon; all other, 30 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 23: That the House recede from its disagreement to the amendment of the Senate numbered 23, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

45. *Peppermint oil, 80 cents per pound.*

And the Senate agree to the same.

Amendments numbered 26 and 27: That the House recede from its disagreement to the amendments of the Senate numbered 26 and 27, and agree to the same with amendments by striking out the paragraph and inserting in lieu thereof as follows:

49. *Baryta, sulphate of, or barytes, including barytes earth, unmanufactured,* $1.12 *per ton; manufactured,* $6.72 *per ton.*

And the Senate agree to the same.

Amendment numbered 28: That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

50. *Blues, such as Berlin, Prussian, Chinese, and all others, containing ferrocyanide of iron, dry or ground or mixed with oil,* 6 *cents per pound; in pulp or mixed with water,* 6 *cents per pound on the material contained therein when dry.*

And the Senate agree to the same.

Amendment numbered 29: That the House recede from its disagreement to the amendment of the Senate numbered 29, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

53. *Chrome yellow, chrome green, and all other chromium colors in which lead and bichromate of potash or soda are component parts, dry, or ground in or mixed with oil,* 4½ *cents per pound; in pulp or mixed with water,* 4½ *cents per pound on the material contained therein when dry.*

And the Senate agree to the same.

Amendment numbered 33: That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

All paints and colors, mixed or ground with water or solutions other than oil, and commercially known as artists' water-color paints, 30 *per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 38: That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

68. *Phosphorus,* 20 *cents per pound.*

And the Senate agree to the same.

Amendment numbered 53: That the House recede from its disagreement to the amendment of the Senate numbered 53, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

85. *Sulphate of soda, or salt cake or niter-cake,* $1.25 *per ton.*

And the Senate agree to the same.

Amendment numbered 54: That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

88. *Sulphur, refined,* $8 *per ton; sublimed, or flowers of,* $10 *per ton.*

And the Senate agree to the same.

Amendment numbered 55: That the House recede from its disagreement to the amendment of the Senate numbered 55, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

89. *Sumac, ground, four-tenths of* 1 *cent per pound.* (Page 1089, Conference Report.)

And the Senate agree to the same.

Amendment numbered 59: That the House recede from its disagreement to the amendment of the Senate numbered 59, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

101. *All other china, porcelain, parian, bisque, earthen, stone, and crockery ware, and manufactures of the same, by whatsoever designation or name known in the trade, including lava tips for burners, not specially provided for in this act, if ornamented or decorated, in any manner,* 60 *per cent. ad valorem, if not ornametal or decorated* 55 *per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 60: That the House recede from its disagreement to the amendment of the Senate numbered 60, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

103. *Green, and colored, molded or pressed, and flint and lime glass bottles, holding more than one pint, and demijohns, and carboys (covered or uncovered), and other molded or pressed green and colored and flint or lime bottle glassware, not specially provided for in this act,* 1 *cent per pound. Green, and colored, molded or pressed, and flint and lime glass bottles, and vials holding not more than one pint and not less than one-quarter of a pint,* 1½ *cents per pound; if holding less than one-fourth of a pint,* 50 *cents per gross.*

And the Senate agree to the same.

Amendment numbered 61: That the House recede from its disagreement to the amendment of the Senate numbered 61, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

105. *Flint and lime, pressed glassware, not cut, engraved, painted, etched, decorated, colored, printed, stained, silvered, or gilded,* 60 *per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 62: That the House recede from its disagreement to the amendment of the Senate numbered 62, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

106. *All articles of glass, cut, engraved, painted, colored, printed, stained, decorated, silvered, or gilded, not including plate glass silvered, or looking-glass plates, 60 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 64: That the House recede from its disagreement to the amendment of the Senate numbered 64, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

108. *Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, 60 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 65: That the House recede from its disagreement to the amendment of the Senate numbered 65, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

109. *Heavy blown glass, blown with or without a mold, not cut or decorated, finished or unfinished, 60 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 66: That the House recede from its disagreement to the amendment of the Senate numbered 66, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

110. *Porcelain or opal glassware, 60 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 67, 68, 69, 70, and 71: That the House recede from its disagreement to the amendments of the Senate numbered 67, 68, 69, 70, and 71, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

112. *Unpolished cylinder, crown, and common window-glass, not exceeding 10 by 15 inches square, 1⅝ cents per pound; above that, and not exceeding 16 by 24 inches square, 1¾ cents per pound; above that, and not exceeding 24 by 30 inches square, 2⅝ cents per pound; above that, and not exceeding 24 by 36 inches square, 2¾ cents per pound; all above that, 3½ cents per pound: Provided, That unpolished cylinder, crown, and common window-glass imported in boxes shall contain 50 square feet, as nearly as sizes will permit, and the duty shall be computed thereon according to the actual weight of glass.*

And the Senate agree to the same.

Amendment numbered 78: That the House recede from its disagreement to the amendment of the Senate numbered 78, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

122. *All stained or painted window-glass and stained or painted glass windows, and hand, pocket, or table mirrors, not exceeding in size 144 square inches, with or without frames or cases, of whatever material composed, lenses of glass or pebble, wholly or partly manufactured, and not specially provided for in this act, and fusible enamel, 45 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 86, 87, 88, 89, and 90: That the House recede from its disagreement to the amendments of the Senate numbered 86, 87, 88, 89, and 90, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

138. *Boiler or other plate iron or steel, except saw-plates hereinafter provided for, not thinner than No. 10 wire gauge, sheared and unsheared, and skelp iron or steel sheared or rolled in grooves, valued at 1 cent per pound or less, five-tenths of 1 cent per pound; valued above 1 cent and not above 1.4 cents per pound, sixty-five hundredths of 1 cent per pound; valued above 1.4 cents and not above 2 cents per pound, eight-tenths of 1 cent per pound; valued above 2 cents and not above 3 cents per pound, 1.3 cents per pound; valued above 3 cents and not above 4 cents per pound, 1.5 cents per pound; valued above 4 cents and not above 7 cents per pound, 2 cents per pound; valued above 7 cents and not above 10 cents per pound, 2.8 cents per pound; valued above 10 cents and not above 13 cents per pound, 3¼ cents per pound; valued above 13 cents per pound, 45 per cent. ad valorem: Provided, That all plate iron or steel thinner than No. 10 wire gauge shall pay duty as iron or steel sheets.*

And the Senate agree to the same.

Amendments numbered 94, 95, 96, and 97: That the House recede from its disagreement to the amendments of the Senate numbered 94, 95, 96, and 97, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof the following:

143. *All iron or steel sheets or plates, and all hoop, band, or scroll iron or steel, excepting what are known commercially as tin-plates, terne-plates, and taggers tin, and hereinafter provided for, when galvanized or coated with zinc or spelter, or other metals, or any alloy of those metals, shall pay three-fourths of 1 cent per pound more duty than the rates im-*

dosed by the preceding paragraph upon the corresponding gauges or forms of common or black sheet or taggers iron or steel; and on and after July 1, 1891, all iron or steel sheets, or plates, or taggers iron coated with tin or lead or with a mixture of which these metals or either of them is a component part, by the dipping or any other process, and commercially known as tin plates, terne-plates, and taggers tin, shall pay 2.2 cents per pound; Provided, That on and after July 1, 1891, manufactures of which tin-plates, terne-plates, taggers tin, or either of them are component materials of chief value, and all articles, vessels, or wares manufactured, stamped, or drawn from sheet-iron or sheet-steel, such material being component of chief value, and coated wholly or in part with tin or lead or a mixture of which these metals or either of them is a component part, shall pay a duty of 55 per cent, ad valorem: Provided further, That on and after October 1, 1897, tin-plates and terne-plates lighter in weight than 63 pounds per hundred square feet shall be admitted free of duty unless it shall be made to appear to be the satisfaction of the President (who shall thereupon by proclamation make known the fact) that the aggregate quantity of such plates lighter than 63 pounds per hundred square feet, produced in the United States during either of the six years next preceding June 30, 1897, has equaled one-third the amount of such plates imported and entered for consumption during any fiscal year after the passage of this act and prior to said October 1, 1897: Provided, That the amount of such plates manufactured into articles exported, and upon which a drawback shall be paid, shall not be included in ascertaining the amount of such importations: And provided further, That the amount or weight of sheet-iron or sheet-steel manufactured in the United States and applied or wrought in the manufacture of articles or wares tinned or terne-plated in the United States, with weight allowance as sold to manufacturers or others, shall be considered as tin and terne plates produced in the United States within the meaning of this act.

And the Senate agree to the same.

Amendment numbered 103: That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof the following:

152. *On all iron or steel bars or rods of whatever shape or section, which are cold-rolled, cold-hammered, or polished in any way in addition to the ordinary process of hot rolling or hammering, there shall be paid one-fourth of 1 cent per pound in addition to the rates provided in this act; and on all strips, plates, or sheets of iron or steel of whatever shape, other than the polished, planished, or glanced sheet-iron or sheet-steel hereinbefore provided for, which are cold rolled, cold-hammered, blued, brightened, tempered, or polished by any process to such perfected surface finish, or polished better than the grade of cold-rolled, smooth only, hereinbefore provided for, there shall be paid 1¼ cents per pound in addition to the rates provided in this act upon plates, strips, or sheets of iron or steel of common or black finish; and on steel circular saw plates there shall be paid 1 cent per pound in addition to the rate provided in this act for steel saw plates.*

And the Senate agree to the same.

Amendments numbered 115 and 116: That the House recede from its disagreement to the amendments of the Senate numbered 115 and 116, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

186. *Aluminium or aliminum, in crude form, alloys of any kind in which aluminum is the component material of chief value, 15 cents per pound.*

And the Senate agree to the same.

Amendments numbered 117 and 118: That the House recede from its disagreement to the amendment of the Senate numbered 117 and 118, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof the following

(page 1090):

190. *Bronze powder, 12 cents per pound; bronze or Dutch metal, or aluminum, in leaf, 8 cents per package of 100 leaves.*

And the Senate agree to the same.

Amendments numbered 123, 124, 125, and 126: That the House recede from its disagreement to the amendments of the Senate numbered 123, 124, 125, and 126, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof the following:

191. *Bullions and metal thread of gold, silver, or other metals not specially provided for in this act, 30 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 128: That the House recede from its disagreement to the amendment of the Senate numbered 128, and agree to the same with an amendment striking out the paragraph and inserting in lieu thereof as follows:

203. *Nickel, nickel oxide, alloy of any kind in which nickel is the component material of chief value, 10 cents per pound.*

And the Senate agree to the same.

Amendment numbered 129: That the House recede from its disagreement to the amendment of the Senate numbered 129, and agree to the same with an amendment striking out the amendment and inserting in lieu thereof as follows:

209. *Tin: On and after July 1, 1893, there shall be imposed and paid upon cassiterite or*

black oxide of tin, and upon bar, block, and pig tin, a duty of 4 *cents per pound: Provided, That unless it shall be made to appear to the satisfaction of the President of the United States (who shall make known the fact by proclamation) that the product of the mines of the United States shall have exceeded* 5,000 *tons of cassiterite, and bar, block, and pig tin in any one year prior to July* 1, 1895, *then all imported cassiterite, bar, block, and pig tin shall, after July* 1, 1895, *be admitted free of duty.*

And the Senate agree to the same.

Amendment numbered 133: That the House recede from its disagreement to the amendment of the Senate numbered 133, and agree to the same with an amendment striking out the word "ten:" and the Senate agree to the same.

Amendment numbered 138: That the House recede from its disagreement to the amendment of the Senate numbered 138, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

219. *Cedar: That on and after March* 1, 1891, *paving posts, railroad ties, and telephone and telegraph poles of cedar, shall be dutiable at* 20 *per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 139: That the House recede from its disagreement to the amendment of the Senate numbered 139, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

220. *Sawed boards, plank, deals, and all forms of sawed cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet-woods not further manufactured than sawed,* 15 *per cent. ad valorem; veneers of wood, and wood unmanufactured, not specially provided for in this act,* 20 *per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 149: That the House recede from its disagreement to the amendment of the Senate numbered 149, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

231. *That on and after July* 1, 1891, *and until July* 1, 1905, *there shall be paid, from any moneys in the Treasury not otherwise appropriated, under the provisions of section* 3689 *of the Revised Statutes, to the producer of sugar testing not less than* 90 *degrees by the polariscope, from beets, sorghum, or sugar-cane grown within the United States, or from maple sap produced within the United States, a bounty of* 2 *cents per pound; and upon such sugar testing less than* 90 *degrees by the polariscope and not less than* 80 *degrees a bounty of* 1¾ *cents per pound, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury shall prescribe.*

And the Senate agree to the same.

Amendments numbered 162 and 163: That the House recede from its disagreement to the amendments of the Senate numbered 162 and 163, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

237. *All sugars above No.* 16 *Dutch standard in color shall pay a duty of five-tenths of* 1 *cent per pound: Provided, That all such sugars above No.* 16 *Dutch standard in color shall pay one-tenth of* 1 *cent per pound in addition to the rate herein provided for, when exported from, or the product of any country when and so long as such country pays or shall hereafter pay, directly or indirectly, a bounty on the exportation of any sugar that may be included in this grade, which is greater than is paid on raw sugars of a lower saccharine strength; and the Secretary of the Treasury shall prescribe suitable rules and regulations to carry this provision into effect: And provided further, That all machinery purchased abroad and erected in a beet-sugar factory and used in the production of raw sugar in the United States from beets produced therein shall be admitted duty free until the* 1*st day of July,* 1892: *Provided, That any duty collected on any of the above described machinery purchased abroad and imported into the United States for the uses above indicated since January* 1, 1890, *shall be refunded.*

And the Senate agree to the same.

Amendment numbered 165: That the House recede from its disagreement to the amendment of the Senate numbered 165, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

241. *That the provisions of this act providing terms for the admission of imported sugars and molasses and for the payment of a bounty on sugars of domestic production shall take effect on the first day of April,* 1891: *Provided, That on and after the* 1*st day of March,* 1891, *and prior to the* 1*st day of April,* 1891, *sugars not exceeding No.* 16 *Dutch standard in color, may be refined in bond without payment of duty, and such refined sugars may be transported in bond and stored in bonded warehouse at such points of destination as are provided in existing laws relating to the immediate transportation of dutiable goods in bond, under such rules and regulations as shall be prescribed by the Secretary of the Treasury.*

And the Senate agree to the same.

Amendments numbered 177 and 178: That the House recede from its disagreement to the amendments of the Senate numbered 177 and 178, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

281. *Peas, green, in bulk or in barrels, sacks, or similar packages,* 40 *cents per bushel*

of 60 pounds; prase, dried, 20 cents per bushel; split prase, 50 cents per bushel of 60 pounds; prase in cartons, papers, or other small packages, 1 cent per pound.

And the Senate agree to the same.

Amendment numbered 181: That the House recede from its disagreement to the amendment of the Senate numbered 181, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

293. *Fish, smoked, dried, salted, pickled, frozen, packed in ice, or otherwise prepared for preservation, and fresh fish not specially provided for in this act, three-fourths of 1 cent per pound.*

And the Senate agree to the same.

Amendment numbered 183: That the House recede from its disagreement to the amendment of the Senate numbered 183, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

301. *Oranges, lemons, and limes, in packages of capacity of 1¼ cubic feet or less, 13 cents per package; in packages of capacity exceeding 1¼ cubic feet and not exceeding 2½ cubic feet, 25 cents per package; in packages of capacity exceeding 2½ cubic feet and not exceeding 5 cubic feet, 50 cents per package; in packages of capacity exceeding 5 cubic feet, for every additional cubic foot or fractional part thereof, 10 cents; in bulk, $1.50 per one thousand, and in addition thereto a duty of 30 per cent, ad valorem upon the boxes or barrels containing such oranges, lemons, or limes.*

And the Senate agree to the same.

Amendment numbered 188: That the House recede from its disagreement to the amendment of the Senate numbered 188, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

318. *Chocolate (other than chocolate confectionery and chocolate commercially known as sweetened chocolate), 2 cents per pound.*

And the Senate agree to the same.

Amendment numbered 190: That the House recede from its disagreement to the amendment of the Senate numbered 190, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

324. *Dextrine, burnt starch, gum substitute, or British gum, 1½ cents per pound.*

And the Senate agree to the same.

Amendment numbered 194: That the House recede from its disagreement to the amendment of the Senate numbered 194, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

329. *Brandy and other spirits manufactured or distilled from grain or other materials, and not specially provided for in this act, $2.50 per proof gallon.*

And the Senate agree to the same.

Amendments numbered 196 to and including 223: That the House recede from its disagreement to the amendments of the Senate numbered 196 to and including 223, and agree to the same with amendments as follows: Strike out the paragraphs and insert in lieu therof the following:

332. *Cordials, liquors, arrack, absinthe, kirschwasser, ratifia, and other spirituous beverages or bitters of all kinds containing spirits, and not specially provided for in this act, $2.50 per proof gallon.*

333. *No lower rate or amount of duty shall be levied, collected, and paid on brandy, spirits, and other spirituous beverages than that fixed by law for the description of first proof; but it shall be increased in proportion for any greater strength than the strength of first proof, and all imitations of brandy, or spirits, or wines, imported by any names whatever, shall be subject to the highest rate of duty provided for the genuine articles respectively intended to be represented, and in no case less than $1.50 per gallon.*

334. *Bay-rum or bay water, whether distilled or compounded, of first proof, and in proportion for any greater strength than first proof, $1.50 per gallon.*

335. *Champagne and all other sparkling wines, in bottles (page 1091) containing each not more than 1 quart and more than 1 pint, $8 per dozen; containing not more than 1 pint each and more than one-half pint, $4 per dozen; containing one-half pint each or less, $2 per dozen; in bottles or other vessels containing more than 1 quart each, in addition to $8 per dozen bottles, on the quantity in excess of 1 quart at the rate of $2.50 per gallon.*

336. *Still wines, including ginger wine or ginger cordial and vermuth, in casks, 50 cents per gallon; in bottles or jugs, per case of 1 dozen bottles or jugs, containing each not more than 1 quart and more than 1 pint, or twenty-four bottles or jugs, containing each not more than 1 pint, $1.60 per case; and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of 5 cents per pint or fractional part thereof; but no separate or additional duty shall be assessed on the bottles or jugs: Provided, That any wines, ginger cordial, or vermuth imported containing more than 24 per cent. of alcohol, shall be forfeited to the United States: And provided further, That there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits. Wines, cordials, brandy, and other spirituous liquors imported in bottles or jugs shall be packed in packages containing not less than one dozen bottles or jugs*

in each package; and all such bottles or jugs shall pay an additional duty of 3 cents for each bottle or jug, unless specially provided for in this act.

337. *Ale, porter, and beer, in bottles or jugs, 40 cents per gallon, but no separate or additional duty shall be assessed on the bottles or jugs; otherwise than in the bottles or jugs, 20 cents per gallon.*

338. *Malt extract, fluid, in casks, 20 cents per gallon; in bottles or jugs, 40 cents per gallon; solid or condensed, 40 per cent. ad valorem.*

339. *Cherry juice and prune juice, or prune wine, and other fruit juice, not specially provided for in this act, containing not more than 18 per cent. of alcohol, 60 cents per gallon; if containing more than 18 per cent. of alcohol, $2.50 per proof gallon.*

340. *Ginger-ale, ginger-beer, lemonade, soda-water, and other similar waters in plain green or colored molded or pressed glass bottles, containing each not more than three-fourths of a pint, 13 cents per dozen; containing more than three-fourths of a pint each and not more than 1½ pints, 26 cents per dozen; but no separate or additional duty shall be assessed on the bottles; if imported otherwise than in plain green or colored molded or pressed glass bottles, or in such bottles containing more than 1½ pints each, 50 cents per gallon and in addition thereto duty shall be collected on the bottles, or other coverings, at the rates which would be chargeable thereon if imported empty.*

341. *All mineral waters, and all imitations of natural mineral waters, and all artificial mineral waters not specially provided for in this act, in plain green or colored glass bottles, containing not more than 1 pint, 16 cents per dozen bottles. If containing more than 1 pint and not more than 1 quart, 25 cents per dozen bottles. But no separate duty shall be assessed upon the bottles. If imported otherwise than in plain green or colored glass bottles, or if imported in such bottles containing more than 1 quart, 20 cents per gallon, and in addition thereto duty shall be collected upon the bottles or other coverings at the same rates that would be charged if imported empty or separately.*

And the Senate agree to the same.

Amendment numbered 230. That the House recede from its disagreement to the amendment of the Senate numbered 230, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

Provided, That all such clothing ready made and articles of wearing apparel having India rubber as a component material (not including gloves or elastic articles that are specially provided for in this act) shall be subject to a duty of 50 cents per pound, and in addition thereto 50 per cent. ad valorem.

And the Senate agree to the same.

Amendments numbered 231 and 232: That the House recede from its disagreement to the amendments of the Senate numbered 231 and 232, and agree to the same with amendments as follows: Striking out the paragraph and inserting in lieu thereof the following.

350. *Plushes, velvets, velveteens, corduroys, and all pile fabrics composed of cotton or other vegetable fiber, not bleached, dyed, colored, stained, painted, or printed, 10 cents per square yard and 20 per cent. ad valorem; on all such goods if bleached, 12 cents per square yard and 20 per cent. ad valorem; if dyed, colored, stained, painted, or printed, 14 cents per yard and 20 per cent. ad valorem; but none of the foregoing articles in this paragraph shall pay a less rate of duty than 40 per cent. ad valorem.*

351. *Chenille curtains, table covers, and all goods manufactured of cotton chenille, or of which cotton chenille forms the component material of chief value, 60 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 233: That the House recede from its disagreement to the amendment of the Senate numbered 233, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

353. *Stockings, hose, and half-hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames, or knit by hand, including such as are commercially known as seamless stockings, hose, or half hose, all of the above, composed of cotton or other vegetable fiber, finished or unfinished, valued at not more than 60 cents per dozen pairs, 20 cents per dozen pairs, and in addition thereto 20 per cent. ad valorem; valued at more than 60 cents per dozen pairs, and not more than $2 per dozen pairs, 50 cents per dozen pairs, and in addition thereto 30 per cent. ad valorem; valued at more than $2 per dozen pairs, and not more than $4 per dozen pairs, 75 cents per dozen pairs, and in addition thereto 40 per cent. ad valorem; valued at more than $4 per dozen pairs, $1 per dozen pairs, and in addition thereto 40 per cent. ad valorem; and all shirts and drawers composed of cotton or other vegetable fiber, valued at more than $1.50 per dozen and not more than $3 per dozen, $1 per dozen, and in addition thereto 35 per cent. ad valorem; valued at more than $3 per dozen and not more than $5 per dozen, $1.25 per dozen, and in addition thereto 40 per cent. ad valorem; valued at more than $5 per dozen and not more than $7 per dozen, $1.50 per dozen, and in addition thereto 40 per cent. ad valorem; valued at more than $7 per dozen, $2 per dozen, and in addition thereto 40 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 235, 236, and 237: That the House recede from its disagreement to the amendments of the Senate numbered 235, 236, and 237, and agree to the

same with amendments as follows: Striking out the paragraphs and inserting in lieu thereof the following:

357. *Flax, not hackled or dressed, 1 cent per pound.*

358. *Flax, hackled, known as "dressed line," 3 cents per pound.*

359. *Tow, of flax or hemp, one-half of 1 cent per pound.*

And the Senate agree to the same.

Amendments numbered 241 and 242: That the House recede from its disagreement to the amendments of the Senate numbered 241 and 242, and agree to the same with amendments as follows: Striking out the paragraph and inserting in lieu thereof the following:

362. *Cables, cordage, and twine (except binding-twine composed wholly of manilla or sisal grass), 14 cents per pound; all binding-twine manufactured in whole or in part from istle or Tampico fiber, manilla, sisal grass, or sunn, seven-tenths of 1 cent per pound; cables and cordage made of hemp, 2½ cents per pound; tarred cables and cordage, 3 cents per pound.*

And the Senate agree to the same.

Amendments numbered 249 and 250: That the House recede from its disagreement to the amendments of the Senate numbered 249 and 250, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

367. *Flax gill-netting, nets, webs, and seines, when the thread or twine of which they are composed is made of yarn of a number not higher than 20, 15 cents per pound and 35 per cent. ad valorem; when made of threads or twines, the yarn of which is finer than number 20, 20 cents per pound, and in addition thereto 45 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 252 and 253: That the House recede from its disagreement to the amendments of the Senate numbered 252 and 253, and agree to the same with amendments as follows: Striking out the paragraph and inserting in lieu thereof the following:

370. *Yarns or threads composed of flax or hemp, or of a mixture of either of these substances, valued at 13 cents or less per pound, 6 cents per pound; valued at more than 13 cents per pound, 45 per cent. ad valorem.*

371. *All manufactures of flax or hemp, or of which these substances, or either of them, is the component material of chief value, not specially provided for in this act, 50 per cent. ad valorem: Provided, That until January 1, 1894, such manufactures of flax containing more than 100 threads to the square inch, counting both warp and filling, shall be subject to a duty of 25 per cent. ad valorem in lieu of the duty herein provided.*

And the Senate agree to the same.

Amendment numbered 255: That the House recede from its disagreement to the amendment of the Senate numbered 255, and agree to the same with an amendment as follows: Striking out the amendment and inserting in lieu thereof the following: *Shirts and all articles of wearing apparel of every description, not specially provided for in this act, composed wholly or in part of linen 55 per cent. ad valorem;* and the Senate agree to the same.

Amendments numbered 256, 257, 258, and 259: That the House recede from its disagreement to the amendments of the Senate numbered 256, 257, 258, and 259, and agree to the same with amendments as follows: Striking out the paragraphs and inserting in lieu thereof the following:

373. *Laces, edgings, embroideries, insertings, neck ruffings, cuchings, trimmings, tuckings, lace window curtains, and other similar tambored articles, and articles embroidered by hand or machinery, embroidered and hemstitched handkerchiefs, and articles made wholly or in part of lace, ruffling, tuckings, or cuchings, all of the above named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them is the component material of chief value, not specially provided for in this act, 60 per cent. ad valorem: Provided, That articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.*

And the Senate agree to the same.

Amendment numbered 260: That the House recede from its disagreement to the amendment of the Senate numbered 260, and agree to the same with amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

374. *All manufactures of jute, or other vegetable fiber, except flax, hemp, or cotton, or of which jute, or other vegetable fiber, except flax, hemp, or cotton, is the component material of chief value, not specially provided for in this act, valued at 5 cents per pound or less, 2 cents per pound; valued above 5 cents per pound, 40 per cent. ad valorem.* (Page 1092.)

And the Senate agree to the same.

Amendment numbered 269: That the House recede from its disagreement to the

amendment of the Senate numbered 269, and agree to the same with an amendment, as follows: Striking out the paragraph and inserting in lieu thereof the following:

396. *On clothing, ready made, and articles of wearing apparel of every description, made up or manufactured wholly or in part, not specially provided for in this act, felts not woven, and not specially provided for in this act; and plushes and other pile fabrics, all the foregoing composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, the duty per pound shall be four and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto 60 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 271, 272, and 273: That the House recede from its disagreement to the amendments of the Senate numbered 271, 272, and 273, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

407. *Carpets and carpeting of wool, flax, or cotton, or composed in part of either, not specially provided for in this act, 50 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 279: That the House recede from its disagreement to the amendment of the Senate numbered 279, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

411. *Velvets, plushes, or other pile fabrics containing, exclusive of selvages, less than 75 per cent. of weight in silk, $1.50 per pound and 15 per cent. ad valorem; containing, exclusive of selvages, 75 per cent. or more in weight of silk, $3.50 per pound and 15 per cent. ad valorem; but in no case shall any of the foregoing articles pay a less rate of duty than 50 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 281: That the House recede from its disagreement to the amendment of the Senate numbered 281, and agree to the same with an amendment as follows: Striking out the proviso and inserting in lieu thereof the following:

Provided, That all such clothing ready made and articles of wearing apparel, when composed in part of India rubber (not including gloves or elastic articles that are specially provided for in this act), shall be subject to a duty of 8 cents per ounce, and in addition thereto 60 per cent. ad valorem.

And the Senate agree to the same.

Amendment numbered 290: That the House recede from its disagreement to the amendment of the Senate numbered 290, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

419. *Papers known commercially as copying paper, filtering paper, silver paper, and all tissue paper, white or colored, made up in copying books, reams, or in any other form, 8 cents per pound, and in addition thereto 15 per cent. ad valorem; albumenized or sensitized paper, 35 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 292: That the House recede from its disagreement to the amendment of the Senate numbered 292, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

422. *Paper hangings and paper for screens or fire-boards, writing paper, drawing paper, and all other paper not specially provided for in this act, 25 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 297 and 298: That the House recede from its disagreement to the amendments of the Senate numbered 297 and 298, and agree to the same with amendments as follows: Striking out the paragraphs and inserting in lieu thereof the following:

429. *Buttons, commercially known as agate buttons, 25 per cent. ad valorem, pearl and shell buttons, 2½ cents per line button measure of one-fortieth of 1 inch per gross, and in addition thereto 25 per cent. ad valorem.*

430. *Ivory, vegetable ivory, bone or horn buttons, 50 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 302 and 303: That the House recede from its disagreement to the amendments of the Senate numbered 302 and 303, and agree to the same with amendments as follows: Striking out the paragraph and inserting in lieu thereof the following:

443. *Feathers and downs of all kinds, crude or not dressed, colored or manufactured, not specially provided for in this act, 10 per cent. ad valorem; when dressed, colored, or manufactured, including quills of down and other manufactures of down, and also including dressed and finished birds suitable for millinery ornaments, and artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed, not specially provided for in this act, 50 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 308 and 309: That the House recede from its disagreement to the amendments of the Senate numbered 308 and 309, and agree to the same with

an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

456. *Calf-skins, tanned, or untanned and dressed, dressed upper leather, including patent, enameled, and japanned leather, dressed or undressed, and finished; chamois or other skins not specially enumerated or provided for in this act, 20 per cent. ad valorem; book-binders' calf-skins, kangaroo, sheep and goat skins, including lamb and kid skins, dressed and finished, 20 per cent. ad valorem; skins for morrocco, tanned but unfinished, 10 per cent. ad valorem; piano-forte leather, and piano-forte action leather, 35 per cent. ad valorem; japanned calf-skins, 30 per cent. ad valorem; boots and shoes made of leather, 25 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 311, 312, 313, 314, and 315: That the House recede from its disagreement to the amendments of the Senate numbered 311, 312, 313, 314, and 315, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

459. *Manufactures of alabaster, amber, asbestus, bladders, coral, catgut, or whip-gut, or worm-gut, jet, paste, spar, wax, or of which these substances or either of them is the component material of chief value, not specially provided for in this act, 25 per cent. ad valorem; osier or willow prepared for basket-makers' use, 30 per cent. ad valorem; manufactures of osier or willow, 40 per cent. ad valorem.*

And the Senate agree to the same.

Amendments numbered 317 and 318: That the House recede from its disagreement to the amendments of the Senate numbered 317 and 318, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

461. *Manufactures of leather, fur, gutta-percha, vulcanized India rubber known as hard rubber, human hair, papier-mâché, indurated fiber wares and other manufactures composed of wood or other pulp, or of which these substances or either of them is the component material of chief value; all of the above not specially provided for in this act, 35 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 320: That the House recede from its disagreement to the amendment of the Senate numbered 320, and agree to the same with an amendment as follows:

463. *Masks, composed of paper or pulp, 35 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 325: That the House recede from its disagreement to the amendment of the Senate numbered 325, and agree to the same with an amendment as follows: Strike out the paragraph and insert in lieu thereof the following:

465. *Paintings in oil or water colors, and statuary, not otherwise provided for in this act, 15 per cent. ad valorem; but the term "statuary" as herein used shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.*

And the Senate agree to the same.

Amendment numbered 327: That the House recede from its disagreement to the amendment of the Senate numbered 327, and agree to the same with an amendment as follows:

466. *Slate pencils, 4 cents per gross.*

And the Senate agree to the same.

Amendment numbered 329: That the House recede from its disagreement to the amendment of the Senate numbered 329, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

468. *Pipes, pipe-bowls, of all materials, and all smokers' articles whatsoever, not specially provided for in this act, including cigarette-holders, cigarette-box cases, pouches for smoking or chewing tobacco, and cigarette paper in all forms, 70 per cent. ad valorem; all common tobacco pipes of clay, 15 cents per gross.*

And the Senate agree to the same.

Amendments numbered 330 and 331: That the House recede from its disagreement to the amendments of the Senate numbered 330 and 331, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

470. *Umbrellas, parasols, and sun-shades, covered with silk or alpaca, 55 per cent. ad valorem; if covered with other material, 45 per cent. ad valorem.*

And the Senate agree to the same.

Amendment numbered 333: That the House recede from its disagreement to the amendment of the Senate numbered 333, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

SEC. 2. *On and after the 6th day of October, 1890, unless otherwise specially provided for in this act, the following articles when imported shall be exempt from duty.*

And the Senate agree to the same.

Amendment numbered 341: That the House recede from its disagreement to the amendment of the Senate numbered 341, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

498. *Art educational stops, composed of glass and metal and valued at not more than* 6 *cents per gross.*

And the Senate agree to the same.

Amendments numbered 344, 345, and 346: That the House recede (page 1093) from its disagreement to the amendments of the Senate numbered 344, 345, and 346, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

515. *Books, maps, lithographic prints, and charts, specially imported, not more than two copies in any one invoice, in good faith, for the use of any society incorporated or established for educational, philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school, or seminary of learning in the United States, su ject to such regulations as the Secretary of the Treasury shall prescribe.*

And the Senate agree to the same.

Amendment numbered 352: That the House recede from its disagreement to the amendment of the Senate numbered 352, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

535. *Clay: Common blue clay in casks suitable for the manufacture of crucibles.*

And the Senate agree to the same.

Amendment numbered 356: That the House recede from its disagreement to the amendment of the Senate numbered 356, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

571. *Fish: The product of American fisheries, and fresh or frozen fish (except salmon) caught in fresh waters by American vessels, or with nets or other devices owned by citizens of the United States.*

And the Senate agree to the same.

Amendment numbered 372: That the House recede from its disagreement to the amendment of the Senate numbered 372, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

674. *Peltries and other usual goods and effects of Indians passing or repassing the boundary line of the United States, under such regulations as the Secretary of the Treasury may prescribe: Provided, That this exemption shall not apply to goods in bales or other packages unusual among Indians.*

And the Senate agree to the same.

Amendments numbered 379 and 380: That the House recede from its disagreement to the amendments of the Senate numbered 379 and 380, and agree to the same with amendments as follows: Striking out the paragraph and inserting in lieu thereof the following:

699. *Seeds: anise, canary, caraway, cardamon, coriandor, cotton, cummin, fennel, fenugreek, hemp, hoarhound, mustard, rape, St. John's bread or bene, sugar-beet, mangel-wurzel, sorghum or sugar-cane for seed, and all flower and grass seeds; bulbs and bulbous roots, not edible; all the foregoing not specially provided for in this act.*

And the Senate agree to the same.

Amendment numbered 388: That the House recede from its disagreement to the amendment of the Senate numbered 388, and agree to the same with an amendment as follows: Striking out the paragraph and inserting in lieu thereof the following:

736. *Tin ore, cassiterite of black oxide of tin, and tin in bars, blocks, pigs, or grain or granulated, until July* 1, 1893, *and thereafter as otherwise provided for in this act.*

And the Senate agree to the same.

Amendments numbered 390 and 391: That the House recede from its disagreement to the amendments of the Senate numbered 390 and 391, and agree to the same with amendments as follows: Striking out the paragraph and inserting in lieu thereof the following:

755. *Fire-wood, handle-bolts, heading-bolts, stave-bolts, and shingle-bolts, hop-poles, fence-posts, railroad ties, ship-timber, and ship-planking, not specially provided for in this act.*

And the Senate agree to the same.

Amendment numbered 401: That the House recede from its disagreement to the amendment of the Senate numbered 401, and agree to the same with an amendment as follows: In line 3 of said amendment strike out the words "July, eighteen hundred and ninety-one," and insert in lieu thereof the words *January, eighteen hundred and ninety-two;* and the Senate agree to the same.

Amendment numbered 404: That the House recede from its disagreement to the amendment of the Senate numbered 404, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 6. *That on and after the* 1*st day of March,* 1891, *all articles of foreign manufac-*

ture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, shall, respectively, be plainly marked, stamped, branded, or labeled in legible English words, so as to indicate the country of their origin; and unless so marked, stamped, branded, or labeled they shall not be admitted to entry.

And the Senate agree to the same.

Amendments numbered 405, 406, and 407: That the House recede from its disagreement to the amendments of the Senate numbered 405, 406, and 407, and agree to the same with amendments as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 7. *That on and after March 1, 1891, no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer shall be admitted to entry at any custom-house of the United States. And in order to aid the officers of the customs in enforcing this prohibition any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department fac-similes of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.*

And the Senate agree to the same.

Amendment numbered 445: That the House recede from its disagreement to the amendment of the Senate numbered 445, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 27. *That all provisions of the statutes imposing restrictions of any kind whatsoever upon farmers and growers of tobacco in regard to the sale of their leaf-tobacco, and the keeping of books, and the registration and report of their sales of leaf-tobacco, or imposing any tax on account of such sales, are hereby repealed: Provided, however, That it shall be the duty of every farmer or planter producing and selling leaf-tobacco, on demand of any internal-revenue officer or other authorized agent of the Treasury Department, to furnish said officer or agent a true and complete statement certified, by oath, of all his sales of leaf-tobacco, the number of hogsheads, cases, or pounds, with the name and residence, in each instance, of every person to whom sold, and the place to which it is shipped. And every farmer or planter who willfully refuses to furnish such information, or who knowingly makes false statements as to any of the facts aforesaid, shall be guilty of a misdemeanor, and shall be liable to a penalty not exceeding $500.*

And the Senate agree to the same.

Amendment numbered 446: That the House recede from its disagreement to the amendment of the Senate numbered 446, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 28. That section 3381 of the Revised Statutes be, and the same is hereby, amended by striking out all after the said number and substituting therefor the following:

"Every peddler of tobacco, before commencing, or, if he has already commenced, before continuing to peddle tobacco, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city, the street and number of the street where he resides, the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. He shall also give a bond in the sum of $500, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, or cigars; that he shall neither sell or offer for sale any tobacco, snuff, or cigars, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, and cigars, as bear the manufacturer's label or caution notice, and his legal marks and brands, and genuine internal revenue stamps which have never before been used."

And the Senate agree to the same.

Amendment numbered 447: That the House recede from its disagreement to the amendment of the Senate numbered 447, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 29. *That section 3383, Revised Statutes, as amended by section 15 of the act of March 1, 1879, be, and the same is hereby, amended by striking out all of said section and by substituting in lieu thereof the following:*

"Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is hereby authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of the internal revenue produce and exhibit his certificate. And whenever any peddler refuses to exhibit his certificate, as aforesaid, on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon and contents, or pack, bundle, or basket of any person so refusing; and the collector of the district in which the seizure occurs, may, on ten days' notice,

published in any newspaper in the district, or served personally on the peddler, or at his dwelling house, require such peddler to show cause, if any he has, why the horses or mules, wagons and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal-revenue laws relating to forfeitures. Any internal-revenue agent may demand production of and inspect the collector's certificate for peddlers, and refusal or failure to produce the same, when so demanded, shall subject the party guilty thereof to a fine of not more than $500 and to imprisonment for not more than twelve months."

And the Senate agree to the same.

Amendment numbered 448: That the House recede from its disagreement to the amendment of the Senate numbered 448, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 30. *That on and after the 1st day of January, 1891, the internal taxes on smoking and manufactured tobacco shall be 6 cents per pound, and on snuff 6 cents per pound.* (Page 1094.)

And the Senate agree to the same.

Amendment numbered 450: That the House recede from its disagreement to the amendment of the Senate numbered 450, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 31. *That section 3363, Revised Statutes, be, and hereby is, amended by striking out all after said number and substituting the following:*

"*No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers from packages authorized by section 3362 of the Revised Statutes; and every person who sells or offers for sale any snuff or any kind of manufactured tobacco not so put up in packages and stamped shall be fined not less than $500 nor more than $5,000, and imprisoned not less than six months nor more than two years.*"

And the Senate agree to the same.

Amendment numbered 451: That the House recede from its disagreement to the amendment of the Senate numbered 451, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 32. *That section 3392 of the Revised Statutes, as amended by section 16 of the act of March 1, 1879, be, and the same hereby is, amended to read as follows:*

"*All cigars shall be packed in boxes not before used for that purpose, containing respectively 25, 50, 100, 200, 250, or 500 cigars each: Provided, however, That manufactures of cigars shall be permitted to pack in boxes not before used for that purpose cigars not to exceed 13 nor less than 12 in number, to be used as sample boxes; and every person who sells or offers for sale, or delivers, or offers to deliver, any cigars in any other form than in new boxes as above described, or who packs in any box any cigars in excess of or less than the number provided by law to be put in each box respectively, or who falsely brands any box, or affixes a stamp on any box denoting a less amount of tax than that required by law, shall be fined for each offence not more than $1,000, and be imprisoned not more than two years: Provided, That nothing in this section shall be construed as preventing the sale of cigars at retail by retail dealers, who have paid the special tax as such, from boxes packed, stamped, and branded in the manner prescribed by law: And provided further, That every manufacturer of cigarettes shall put up all the cigarettes that he manufactures or has manufactured for him, and sells or removes for consumption or use, in packages or parcels containing 10, 20, 50, or 100 cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe; and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom.*"

And the Senate agree to the same.

Amendment numbered 452: That the House recede from its disagreement to the amendment of the Senate numbered 452, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 33. *That section 3357 of the Revised Statutes, as amended by section 2 of the act of June 9, 1880, be, and the same is, amended by striking out all after the number and inserting in lieu thereof the following:*

"*Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns; and he shall cause the several manufactories of tobacco or*

snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner of Internal Revenue."

And the Senate agree to the same.

Amendment numbered 453: That the House recede from its disagreement to the amendment of the Senate numbered 453, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 34. *That section 3389 of the Revised Statutes, as amended by section 16 of the act of March 1, 1879, be, and the same is hereby, amended so as to read as follows:*

"*Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of cigars in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, an abstract of his inventory and monthly returns; and he shall cause the several manufacturers of cigars in the district to be numbered consecutively, which number shall not thereafter be changed.*"

And the Senate agree to the same.

Amendment numbered 455: That the House recede from its disagreement to the amendment of the Senate numbered 455, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 35. *That section 3387 of the Revised Statutes, as amended by section 16 of the act of March 1, 1879, be, and the same is hereby, amended by striking from the said section the following words, namely, "$5.00, with an additional $100 for each person proposed to be employed by him in making cigars," and inserting in lieu of the words so stricken out the words "one hundred dollars."*

And the Senate agree to the same.

Amendment numbered 480: That the House recede from its disagreement to the amendment of the Senate numbered 480, and agree to the same with an amendment as follows: Striking out the section and inserting in lieu thereof the following:

SEC. 42. *That any producer of pure sweet wines, who is also a distiller, authorized to separate from fermented grape-juice, under internal-revenue laws, wine spirits, may use, free of tax, in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products, as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, so much of such wine spirits so separated by him as may be necessary to fortify the wine for the preservation of the saccharine matter contained therein: Provided, That the wine spirits so used free of tax shall not be in excess of the amount required to introduce into such sweet wines an alcoholic strength equal to 14 per cent. of the volume of such wines after such use: Provided further, That such wine containing, after such fortification, more than 24 per cent. of alcohol, as defined by section 3249 of the Revised Statutes, shall be forfeited to the United States: Provided further, That such use of wine spirits free from tax shall be confined to the months of August, September, October, November, December, January, February, March, and April of each year. The Commissioner of Internal Revenue in determining the liability of any distiller of fermented grape-juice to assessment under section 3300 of the Revised Statutes, is authorized to allow such distiller credit in his computation for the wine spirits used by him in preparing sweet wine under the provisions of this section.*

And the Senate agree to the same.

Amendment numbered 485: That the House recede from its disagreement to the amendment of the Senate numbered 485, and agree to the same with an amendment striking out the section and inserting in lieu thereof as follows:

SEC. 47. *That all provisions of law relating to the reimportation of any goods of domestic growth or manufacture which were originally liable to an internal-revenue tax shall be, as far as applicable, enforced against any domestic wines sought to be reimported as an original importation.*

And the Senate agree to the same.

Amendment numbered 486: That the House recede from its disagreement to the amendment of the Senate numbered 486, and agree to the same with an amendment striking out the section and inserting in lieu thereof as follows:

SEC. 48. *That any person using wine spirits or other spirits which have not been tax-paid in fortifying wine otherwise than as provided for in this act, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished for each offense by a fine of not more than $2,000, and for every offense other than the first also by imprisonment for not more than one year.*

And the Senate agree to the same.

Amendment numbered 491: That the House recede from its disagreement to th

amendment of the Senate numbered 491, and agree to the same with an amendment striking out the section and inserting in lieu thereof as follows:

Provided, That any imported merchandise deposited in bond in any public or private bonded warehouse having been so deposited prior to the first day of October, 1890, may be withdrawn for consumption at any time prior to February 1, 1891, upon the payment of duties at the rates in force prior to the passage of this act: Provided further, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its withdrawal.

And the Senate agree to the same.

Amendment numbered 494: That the House recede from its disagreement to the amendment of the Senate numbered 494, and agree to the same with an amendment striking out the section and inserting in lieu thereof as follows:

SEC. 52. *That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act, and thereafter quarterly on the 1st day of January, April, July, and October in each year.*

And the Senate agree to the same.

Amendment numbered 495: That the House recede from its disagreement to the amendment of the Senate numbered 495, and agree to the same with an amendment as follows: Add to section 35, at the end, the following:

And it shall be the duty of special-tax payers to render their returns to the deputy collector at such times within the calendar month in which the special-tax liability commenced as shall enable him to receive such returns, duly signed and verified, not later than the last day of the month, except (page 1095) in cases of sickness or absence, as provided for in section 3176 of the Revised Statutes.

And the Senate agree to the same.

WM. MCKINLEY, JR.,
J. C. BURROWS,
THOS. M. BAYNE,
N. DINGLEY, JR.,
Managers on the part of the House of Representatives.

NELSON W. ALDRICH,
JOHN SHERMAN,
W. B. ALLISON,
FRANK HISCOCK,
Managers on the part of the Senate.

On motion of Mr. McKinley, by unanimous consent,

Ordered, That 500 copies of the said bill as amended by the said report, together with the said report, be printed for the use of the House, the same to be delivered to-morrow morning. (Page 1096.)

* * * * * * *

SATURDAY, *September* 27, 1890.

* * * * * * *

Mr. McKinley, as a privileged question, called up the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill of the House (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, coming over from yesterday as unfinished business.

The House having proceeded to its consideration, and the question being on the agreeing to the said report,

After debate thereon,

Mr. McKinley demanded the previous question,

And the question being put, viz:

Shall the previous question be ordered?

It was decided in the affirmative, { Yeas ..... 150 / Nays ..... 80 / Not voting ..... 95 }

The yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are,

[Here follows lists of those who voted in the affirmative; of those who voted in the negative; and of those who did not vote.]

So the previous question was ordered, and, under the operation thereof, the question being on agreeing on the said report.

And being put, viz:

Will the House agree to the said report of the committee of conference?

It was decided in the affirmative, { Yeas ..... 151 / Nays ..... 81 / Not voting 94

The yeas and nays being desired by one-fifth of the members present,

Those who voted in the affirmative are.

[151 voted in the affirmative; 81 in the negative, and 94 not voting, are here named in their respective lists.]

So the said report was agreed to.

Mr. McKinley moved to reconsider the vote last taken, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, That the Clerk acquaint the Senate therewith.

On motion by Mr. McKinley, by unanimous consent,

Ordered, That 5,000 copies of the said bill (H. R. 9416) as amended by the committee of conference and agreed to by the House be printed, the same to be equally distributed among the members of the House. (Pages 1099–1109.)

TUESDAY, *September* 30, 1890.

* * * * * * *

Mr. McKinley, by unanimous consent, submitted the following concurrent resolution; which was read, considered, and agreed to, viz:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House be, and he is hereby, directed to number consecutively the paragraphs and sections of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, in the enrollment of said bill. (Page 1112.)

* * * * * * *

WEDNESDAY, *October* 1, 1890.

* * * * * * *

A message from the Senate, by Mr. McCook, their Secretary:

Mr. Speaker: The Senate have agreed to reports of committees of conference on amendments to bills and a joint resolution of the House and Senate of the following titles, viz:

* * * * * * *

H. R. 9416. An act to reduce the revenue and equalize the duties on imports, and for other purposes.

* * * * * * *

The Senate have agreed to the concurrent resolution of the House relative to the enrollment of the bill of the House (H. R. 9416) to reduce the revenue and equalize the duties on imports, and for other purposes, with an amendment, in which said amendment I am directed to request the concurrence of the House of Representatives. (Page 1114.)

* * * * * * *

Mr. McKinley, by unanimous consent, called up the following concurrent resolution of the House, on the Speaker's table, with amendment of the Senate thereto, viz:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House be, and he is hereby, directed to number consecutively the paragraphs and sections of House bill 9416, to reduce the revenue and equalize the duties on imports, and for other purposes, in the enrollment of the bill.

The House having proceeded to its consideration, and the question being on agreeing to the following amendment of the Senate, viz:

And he is hereby further directed to enroll paragraphs 362 *and* 372, *as follows:*

362. *Cables, cordage, and twine (except binding-twine composed in whole or in part of istle or Tampico fiber, manilla, sisal grass, or sunn)*, 1½ *cents per pound: all binding-twine manufactured in whole or in part of istle or Tampico fiber, manilla, sisal grass, or sunn, seven-tenths of* 1 *cent per pound: cables and cordage made of hemp*, 2½ *cents per pound: tarred cables and cordage*, 3 *cents per pound.*

372. *Collars and cuffs, composed entirely of cotton*, 15 *cents per dozen pieces and* 35 *per cent. ad valorem: composed in whole or in part of linen*, 30 *cents per dozen pieces and* 40 *per cent. ad valorem: shirts and all articles of wearing apparel of every description, not specially provided for in this act, composed wholly or in part of linen*, 55 *per cent. ad valorem.*

After debate thereon,

The said amendment was agreed to.

Mr. McKinley moved to reconsider the vote last taken, and also moved that the motion to reconsider be laid on the table; which latter motion was agreed to.

Ordered, That the Clerk acquaint the Senate therewith.

Mr. McKinley, by unanimous consent, submitted the following concurrent resolution; which was read, considered, and agreed to, viz:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House be, and he is hereby, directed, in the enrollment of House bill No. 9416, to reduce the revenue and equalize duties on imports and for other purposes, to change paragraph 318 of the bill, as follows:

Insert a parenthesis after the word "confectionery," and strike out the parenthesis after the word "chocolate," where it last occurs in the paragraph, so as to include in parenthesis only the words "other than chocolate confectionery."

Ordered, That the Clerk request the concurrence of the Senate in said resolution. (Page 1115.)

* * * * * * *

Mr. Kennedy, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills and joint resolutions of the following titles:

H. R. 9416. An act to reduce the revenue and equalize duties on imports, and for other purposes. (Page 1117.)

* * * * * * *

A message in writing was received from the President of the United States, by Mr. Pruden, one of his secretaries, which was handed in at the Clerk's desk, notifying the House that he did, on this day, approve and sign bills and joint resolutions of the House of the following titles, viz:

* * * * * * *

H. R. 9416. An act to reduce the revenue and equalize duties on imports, and for other purposes. (Page 1119.)

* * * * * * *

On motion of Mr. McKinley, by unanimous consent,

Ordered, That 5,000 copies of the new tariff law be printed for equal distribution among the members of the House. (Page 1120.)

B.

JOURNAL OF THE SENATE

FIRST SESSION, FIFTY-FIRST CONGRESS.

FRIDAY, *May* 23, 1890.

* * * * * * *

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The House of Representatives has passed a bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; in which it requests the concurrence of the Senate.

* * * * * * *

The bill (H. R. 9416) last received from the House of Representatives for concurrence was read the first and second times by unanimous consent, and referred to the Committee on Finance. (Page 321.)

* * * * * * *

On motion by Mr. Morrill, and by unanimous consent,

Ordered, That ten thousand additional copies of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, be printed for the use of the Senate. (Page 322.)

MONDAY, *May* 26, 1890.

* * * * * * *

TARIFF SCHEDULES.

The Senate proceeded to consider the resolution, submitted by Mr. Plumb on the 24th instant, directing the Committee on Finance to report certain schedule of tariff duties in connection with the bill H. R. 9416; and having been amended, on motion of Mr. Reagan, and the motion of Mr. Hawley,

The resolution as amended was agreed to, as follows:

Resolved, That the Finance Committee be directed to report to the Senate, in connection with House bill No. 9416, commonly known as the tariff bill, a statement showing the duties levied by the present law, the duties as they would be according to said House bill, and the duties as proposed by the said committee; and where practicable with a column showing in dollars, cents, or mills the amount of duties where compound duties are levied, as well as in cases where the duty is specific, the compound duties be translated into an equivalent ad valorem, all said duties to be stated in parallel columns, or otherwise, as may be most convenient for examination and comparison; and said committee is specially instructed, in the event it shall recommend the levy of duties not now provided by law, or shall recommend the increase or reduction of duties beyond those now imposed, to furnish to the Senate in writing the reasons in each case which have led the committee to recommend the addition of such new duties or increase or decrease of present duties respectively. (Page 327.)

WEDNESDAY, *June* 18, 1890.

* * * * * * *

Mr. Morrill, from the Committee on Finance, to whom was referred the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, reported it with amendments (page 378).

* * * * * * *

THURSDAY, *June* 19, 1890.

* * * * * * *

On motion by Mr. Morrill,

Ordered, That 10,000 copies of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, be printed in pamphlet form for the use of the Senate. (Page 381.)

* * * * * * *

MONDAY, *July* 7, 1890.

* * * * * * *

On motion by Mr. Morrill that the Senate proceed to the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes,

The yeas were 16, and the nays were 24.

On motion by Mr. Morrill,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

[Then follow lists of the names of those voting affirmatively and negatively.]

The number of Senators voting not constituting a quorum,

The President *pro tempore* directed the roll to be called,

When,

Forty-nine Senators answered to their names.

A quorum being present,

On the question to agree to the motion to proceed to the consideration of the bill H. R. 9416,

It was determined in the negative, { Yeas..... 20 / Nays..... 23

Those who voted in the affirmative are,

[Lists of those voting affirmatively and negatively here follow.]

So the motion was not agreed to. (Page 417.)

SATURDAY, *July* 12, 1890.

* * * * * * *

On motion by Mr. Morrill,

The Senate proceeded to consider, as in Committee of the Whole the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes. (Page 425.)

* * * * * * *

SATURDAY, *July* 19, 1890.

TARIFF BILL.

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, when,

On motion by Mr. Aldrich, at 8 o'clock and 35 minutes p. m.,

The Senate adjourned. (Page 434.)

TUESDAY, *July* 22, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes. (Page 435.)

* * * * * * *

THURSDAY, *July* 24, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes. (P. 438.)

* * * * * * *

FRIDAY, *July* 25, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and,

On motion by Mr. Aldrich, and by unanimous consent,

Ordered, That the first formal reading of the bill be dispensed with, and that it be read by paragraphs for consideration.

After debate on the bill,

On motion by Mr. McPherson, that it be recommitted to the Committee on Finance, with instructions to report at the earliest practicable moment a bill to reduce the revenue and equalize duties on imports, in which the average ad valorem rate of duty on all dutiable articles based upon the importation of 1889 shall not exceed the average ad valorem war tariff rate of 1864.

On motion by Mr. Edmunds,

The ayes and nays were ordered. (Page 439.)

* * * * * * *

SATURDAY, *July* 26, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the motion of Mr. McPherson to recommit the bill to the Committee on Finance with instructions,

After debate, (Page 440.)

* * * * * * *

MONDAY, *July* 28, 1890.

* * * * * * *

PRINTING OF REVENUE BILL.

Mr. Cockrell submitted the following resolution; which was referred to the Committee on Printing:

Resolved, That there be printed in pamphlet form for the use of the Senate 15,000 copies of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, as reported to the Senate from the Committee on Finance, June 18, 1890, with the tables showing duties collected under the existing tariff, notes explanatory of proposed changes from present law, and estimates of the probable effect upon the revenue. (Page 442.)

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the motion of Mr. McPherson to recommit the bill to the Committee on Finance with certain instructions,

After debate,

Mr. Turpie demanded a division of the question; and

On the question to agree to the first branch of the motion, viz:

Shall the bill be recommitted to the Committee on Finance?

It was determined in the negative, { Yeas ..... 19 / Nays 29

The yeas and nays having been heretofore ordered.

[Then follow lists of those voting affirmatively and negatively.]

So the motion to recommit was not agreed to.

On motion by Mr. McPherson, to amend the bill by striking out in line 2, page 2, the word "four" and in lieu thereof inserting *three*,

The yeas were 15 and the nays 23.

On motion by Mr. McPherson (page 443),

The yeas and nays being desired by one-fifth of the Senators present.

[Then follow lists of those voting affirmatively and negatively.]

The number of Senators voting not constituting a quorum. (Page 444.)

TUESDAY, *July* 29, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports and for other purposes; and,

The question being on the amendment proposed by Mr. McPherson, viz: In line 2, page 2, strike out the word "four" and in lieu thereof insert *three*,

It was determined in the negative, { Yeas ..... 20 / Nays 27

The yeas and nays having been heretofore ordered,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. McPherson to amend the bill by striking out in line 3, page 2, the word "five," and in lieu thereof inserting *three and one-half*,

It was determined in the negative, { Yeas ..... 24 / Nays 30

On the motion of Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

A further amendment having been proposed by Mr. McPherson,

Pending debate * * * (Pages 444, 445.)

WEDNESDAY, *July* 30, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the amendment yesterday proposed by Mr. McPherson,

After debate,

The amendment was disagreed to.

The reported amendments having been agreed to in part,

On motion by Mr. Vance to amend the bill by striking out in lines 20 and 21, page 2, the words "and three-fourths cents," and in lieu thereof inserting the word *cent*,

It was determined in the negative, { Yeas ..... 20 / Nays 30

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendment was not agreed to.

On motion by Mr. Vest to amend the bill by striking out in line 23, page 2, the word "one-half" and in lieu thereof inserting *one-fourth*,

It was determined in the negative, { Yeas ..... 20 / Nays 29

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. McPherson to amend the bill by striking out in line 6, page 3, the words "three cents" and in lieu thereof inserting *one cent*,

It was determined in the negative, { Yeas ..... 17 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich,

On motion by Mr. Vest to amend the bill by striking out in line 4, page 6, the words "and fifty cents,"

It was determined in the negative, { Yeas ..... 18 / Nays 26

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendment was not agreed to. (Page 446.)

* * * * * * *

On motion of Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and,

On the question to agree to the amendment reported in line 6, page 6, viz: Strike out in the said line the word "six" and insert *five*,

On motion by Mr. McPherson to amend the amendment by striking out "five" and inserting *four*,

After debate,

It was determined in the negative, { Yeas ..... 16 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and in the negative.]

So the amendment to the amendment was not agreed to.

The question recurring on agreeing to the amendment of the committee,

It was determined in the affirmative.

On motion by Mr. McPherson to amend the bill by striking out in line 19, page 6, the word "fifty" and inserting *twenty-five*,

It was determined in the negative, { Yeas ..... 15 / Nays 29

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and in the negative.]

So the amendment was not agreed to.

The bill having been further amended on the motion of Mr. Plumb.

On motion by Mr. McPherson to amend the bill by striking out in line 20, page 6, the words "fifteen cents per gallon," and in lieu thereof inserting *twenty-five per centum ad valorem*.

The yeas were 14 and the nays were 24.

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and in the negative.]

The number of Senators voting not constituting a quorum,

The Presiding Officer (Mr. Cullom in the chair) directed the roll to be called.

When,

Fifty-three Senators answered to their names.

A quorum being present, and (Page 447.)

The question recurring on agreeing to the amendment proposed by Mr. McPherson,

It was determined in the negative, { Yeas ..... 21 / Nays 31

[Here follow lists of those voting affirmatively and negatively.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich,

On motion by Mr. McPherson to amend the bill by striking out in lines 16 and 17, page 8, the words "four-and-one-half cents per pound" and in lieu thereof inserting *twenty-five per centum ad valorem*.

It was determined in the negative, { Yeas ..... 20 / Nays 27

On motion by Mr. Aldrich,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

[Here follow lists of those who voted affirmatively and negatively.]

So the amendment was not agreed to.

On motion by Mr. McPherson, to amend the bill by striking out in lines 6 and 7, page 9, the words "three cents per pound," and in lieu thereof inserting *twenty per centum ad valorem*.

The yeas were 10 and the nays were 25.

On motion by Mr. Aldrich,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and negatively.]

The number of Senators voting not constituting a quorum,

The presiding officer (Mr. Spooner in the chair) directed the roll to be called, when,

Thirty-nine Senators answered to their names.

A quorum not being present,

On motion by Mr. Aldrich,

Ordered, That the Sergeant-at-Arms request the attendance of absent Senators.

Pending the execution of the order,
A quorum having appeared,
By unanimous consent, further proceedings under the call were dispensed with.
The question recurring on agreeing to the amendment proposed by Mr. McPherson,
The yeas were 14 and the nays were 28.
[Here follow lists of those voting affirmatively and those voting negatively.
The number of Senators voting not constituting a quorum,
The President *pro tempore* directed the roll to be called, when
Fifty-two Senators answered to their names.
A quorum being present, and
The question recurring on agreeing to the amendment proposed by Mr. McPherson,

It was determined in the negative, { Yeas ..... 16 / Nays 32

[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
On motion by Mr. McPherson to amend the bill by striking out, in lines 8 and 9, page 9, the words "one-half of one cent per pound" and inserting *twenty per centum ad valorem*.
After debate,

It was determined in the negative, { Yeas ..... 22 / Nays 31

On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and negatively.]
So the amendment was not agreed to.
The reported amendments having been further agreed to in part,
On the question to agree to the following reported amendments, viz: In line 24, page 9, strike out the word "three" and insert in lieu thereof *five and one-half*, and in line 1, page 10, strike out the word "two" and insert in lieu thereof *three and one-half*.

It was determined in the affirmative, { Yeas ..... 27 / Nays 16

On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and negatively.]
So the amendments were agreed to. (Page 448.)

FRIDAY, *August* 1, 1890.

* * * * * * * *

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes.
On motion by Mr. Vance to amend the bill by striking out in line 5, page 10, the word "three," and in lieu thereof inserting *two*.
After debate,

It was determined in the negative, { Yeas ..... 21 / Nays 29

The yeas and nays being desired by one-fifth of the Senators present,
On motion by Mr. McPherson,
[Here follow lists of those voting affirmatively and negatively.]
So the amendment was not agreed to.
The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich, from the Committee on Finance,
On motion by Mr. Vance to amend the bill by striking out in line 11, page 10, the word "three," and in lieu thereof inserting *two*,

It was determined in the negative, { Yeas ..... 22 / Nays 31

On motion by Mr. Vance,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those who voted in the affirmative and in the negative.]
So the amendment was not agreed to.
On motion by Mr. McPherson to amend the bill by striking out in lines 3 and 4, page 12, the words "one and one-fourth cents per pound," and in lieu thereof inserting *twenty per centum ad valorem*,

It was determined in the negative, { Yeas ..... 18 / Nays 29

On motion by Mr. Vest,
The yeas and nays being desired by one-fifth of the senators present,
[Here follow lists of those voting in the affirmative and in the negative.]
So the amendment was not agreed to.
On motion by Mr. McPherson to amend the bill by striking out in line 20, page 13, "twenty-five" and in lieu thereof inserting *twenty*,
It was determined in the negative, { Yeas ..... 21 / Nays 31

On motion by Mr. Plumb,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting in the affirmative and in the negative.]
So the amendment was not agreed to.
On motion by Mr. Plumb, to amend the bill by striking out in line 1, page 14, the word "eight" and in lieu thereof inserting *six*,
It was determined in the negative, { Yeas ..... 21 / Nays 27

On motion by Mr. Aldrich,
The yeas and nays being desired by one-fifth of the Senators present. (Page 449.)
[Here follow lists of those voting in the affirmative and in the negative.]
So the amendment was not agreed to.
On motion by Mr. McPherson, to amend the bill by striking out in line 21, page 14, "twenty-five" and in lieu thereof inserting *twenty*,
It was determined in the negative, { Yeas ..... 21 / Nays 30

On motion by Mr. Vance,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and of those voting negatively.]
So the amendment was not agreed to.
The reported amendments having been further agreed to in part,
On the question to agree to the amendments reported in lines 1, 2, and 4, page 15,
On motion of Mr. Vest, to amend the same * * * (Page 450.)
Pending debate,

SATURDAY, *August* 2, 1890.

* * * * * * *

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and
The question being on the amendments proposed by Mr. Vest to the amendments reported by the committee in lines 1, 2, and 4, page 15, viz:
In line 2 of the said page strike out "fifty-five" and insert *fifty*; and in line 4 strike out "fifty" and insert *forty*.
After debate,
On the question to agree to the amendments,
The yeas were 17 and the nays 20,
On motion by Mr. Vest,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those who voted affirmatively and those who voted negatively.]
The number of Senators voting not constituting a quorum,
On motion by Mr. Aldrich, at 5 o'clock and 17 minutes p. m.,
The Senate adjourned.

MONDAY, *August* 4, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and
The question being on the amendments proposed by Mr. Vest to the amendments reported by the Committee on Finance, in lines 1, 2, and 4, page 15, viz: In line 2 on said page strike out "fifty-five" and in lieu thereof insert *fifty*, and in line 4 strike out "fifty" and insert *forty*,
After debate,
Mr. Vest having modified his second amendment by inserting in lieu of the word "forty" the word *forty-five*,
On the question to agree to the amendments as modified,
It was determined in the negative, { Yeas ..... 19 / Nays 26

The yeas and nays having been heretofore ordered.

[Here follow lists of those voting in the affirmative and those voting negatively.]

So the amendments to the amendments were not agreed to.

The question recurring on agreeing to the amendments reported by the committee, viz:

On page 15, lines 1 and 2, strike out the word "sixty" and insert *fifty-five*, and in line 4 strike out "fifty-five" and insert *fifty*.

It was determined in the affirmative.

The reported amendments having been further agreed to in part,

On the question to agree to the following reported amendment, viz: Strike out all after line 10, page 17, down to and including the word "valorem" in line 15, page 18, and in lieu thereof insert certain words,

On motion by Mr. McPherson to amend the part proposed to be inserted by striking out in line 1, page 19, the word "forty-five" and in lieu thereof insert *thirty-five*,

The yeas were 17 and the nays were 25.

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

(Page 451.)

The number of Senators voting not constituting a quorum,

The Presiding Officer (Mr. Moody in the chair) directed the roll to be called,

When

Fifty-two Senators answered to their names.

A quorum being present, and

The question being again taken on the amendment of Mr. McPherson,

It was determined in the negative, { Yeas ..... 20 / Nays 28

[Here follow lists of those who voted in the affirmative and those voted in the negative.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Plumb to amend the part proposed to be inserted by striking out in line 1, page 19, the word "forty-five," and inserting *forty*,

It was determined in the negative, { Yeas ..... 20 / Nays 24

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Aldrich, from the Committee on Finance, to amend the amendment,

It was determined in the affirmative, when the amendment as amended was agreed to.

On motion by Mr. Plumb, at 5 o'clock and 6 minutes p. m., that the Senate adjourn,

It was determined in the negative, { Yeas ..... 20 / Nays 27

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the motion was not agreed to.

On the question to agree to the amendments reported in paragraph 116, page 19,

On motion by Mr. Vance to amend the paragraph by striking out all after the word "window glass," as follows: "Not exceeding ten by fifteen inches square, one and one-half cents per pound; above that, and not exceeding sixteen by twenty-four inches square, two cents per pound; above that, and not exceeding twenty-four by thirty inches square, two and one-half cents per pound; all above that, three cents per pound," and in lieu thereof inserting *fifty per centum ad valorem*,

It was determined in the negative, { Yeas ..... 19 / Nays 30

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Plumb to amend the amendments reported by the committee to the paragraph, so as to read in lines 11 and 12 "one cent per pound," in lines 13 and 14 "one and three-eighths cents per pound," in line 16 "two cents per pound," and in lines 17 and 18 "two and one-fourth cents per pound,"

It was determined in the negative, { Yeas ..... 20 / Nays 26

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendments were not agreed to.

On motion by Mr. Plumb to amend the amendments reported so as to read in lines 11 and 12, "one and one-fourth cents per pound," in lines 13 and 14 "one and five-eighths cents per pound," in line 16 "two and one-fourth cents per pound," and in lines 17 and 18 "two and five-eighths cents per pound,"

It was determined in the negative, { Yeas ..... 21 / Nays 25

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendments were not agreed to.

The question recurring on the amendments reported by the committee, and Mr. Aldrich, on behalf of the committee, having modified the same so as to read in lines 11 and 12 "one and one-fourth cents per pound," in lines 13 and 14 "one and three-fourths cents per pound," in line 16 "two and one-fourth cents per pound," and in lines 17 and 18 "two and three-fourths cents per pound,"

The amendments were agreed to; when

On motion by Mr. Aldrich, at 5 o'clock and 50 minutes p. m.,

The Senate adjourned. (Page 452.)

TUESDAY, *August* 5, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The reported amendments having been further agreed to in part, and in part disagreed to, and the bill further amended on the motion of Mr. McPherson and the motion of Mr. Aldrich from the Committee on Finance,

On motion by Mr. Vest to further amend the bill by striking out in line 7, page 21, the word "six" and in lieu thereof insert *four*,

It was determined in the negative, { Yeas ..... 17 / Nays 28

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow the names of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On the question to agree to the amendment reported in paragraph 113, page 22, viz: In lines 6 and 7 strike out "fifty cents per dozen and thirty-five per centum," and in lieu thereof insert *sixty per centum*.

On motion by Mr. McPherson to amend the amendment by striking out in the part proposed to be inserted the word "sixty," and in lieu thereof inserting *forty*,

It was determined in the negative, { Yeas ..... 17 / Nays 29

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment to the amendment was not agreed to.

The question recurring on agreeing to the reported amendment,

It was determined in the affirmative.

On the question to agree to the amendments reported in paragraphs 114 and 115, page 22, viz: In lines 9 and 10 strike out "one dollar per gross pairs," and in lieu thereof insert *sixty per centum ad valorem*; and in lines 12, 13, and 14 strike out "seventy-five cents per gross pairs, and in addition thereto forty-five," and in lieu thereof insert *sixty*.

On motion by Mr. McPherson to amend the amendments by striking out in the parts proposed to be inserted the word "sixty," and in lieu thereof inserting *forty*,

It was determined in the negative, { Yeas ..... 19 / Nays 28

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendments to the amendments were not agreed to.
The question recurring on the agreeing to the reported amendments,
It was determined in the affirmative.
On the question to agree to the amendment reported in line 14, page 23, viz: After the word "sandstone" insert the word *limestone*,

It was determined in the affirmative, { Yeas ..... 33 / Nays 19

On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present.
[Here follow lists of those voting in the affirmative and those voting in the negative.]
So the amendment was agreed to.
On motion by Mr. McPherson to amend the bill by striking out in lines 17 and 18 the words "eleven cents per cubic foot" and in lieu thereof inserting *one dollar per ton*.

It was determined in the negative, { Yeas ..... 20 / Nays 32

On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present.
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Vest, and
A further amendment having been proposed by Mr. Morgan,
Pending debate,
On motion by Mr. Aldrich, at 5 o'clock and 40 minutes p. m.,
The Senate adjourned. (Page 453.)

WEDNESDAY, *August* 6, 1890.

* * * * * * *

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and
The question being on the amendment yesterday proposed by Mr. Morgan,
After debate,
Mr. Morgan withdrew the amendment.
On motion by Mr. Plumb, to amend the bill by striking out in line 13, page 24, the word "seventy-five," and in lieu thereof inserting *sixty*.

It was determined in the negative, { Yeas ..... 21 / Nays 29

On motion by Mr. Plumb,
The yeas and nays being desired by one-fifth of the Senators present.
[Here follow lists of those who voted in the affirmative and those who voted in the negative.]
So the amendment was not agreed to.
The reported amendments having been further agreed to in part, and
A further amendment having been proposed by Mr. Vance,
Pending debate * * * (Page 454.)

THURSDAY, *August* 7, 1890.

* * * * * * *

TARIFF BILL.

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenues and equalize duties on imports, and for other purposes; and
The question being on the amendment yesterday proposed by Mr. Vance, viz: In paragraph 128, page 25, line 5, strike out the words, "three-tenths of one per cent. per pound," and in lieu thereof insert, *five dollars per ton*,

It was determined in the negative, { Yeas ..... 17 / Nays 27

On motion by Mr. Butler,
The yeas and nays being desired by one-fifth of the Senators present,
Those who voted in the affirmative are,
[Here follow lists of those voting affirmatively and negatively.]

So the amendment was not agreed to

On motion by Mr. McPherson to amend the bill by striking out in paragraph 129, page 25, line 11, the words "eight-tenths of one cent per pound," in lines 13 and 14, the words "nine-tenths of one cent per pound," and in line 15 the words "one cent per pound," and inserting at the end of the paragraph the words *fifty per centum ad valorem.*

It was determined in the negative, { Yeas ..... 18 / Nays 28

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on motion of Mr. Aldrich from the Committee on Finance,

On motion by Mr. Vest to further amend the bill by striking out after the word "grooves," in paragraph 132, page 26, line 17, the following:

"Valued at two cents per pound or less, eight-tenths of one cent per pound; valued above two cents and not above three cents per pound, one and one-tenth cents per pound; valued above three cents and not above four cents per pound, one and five-tenths cents per pound; valued above four cents and not above seven cents per pound, two cents per pound; valued above seven cents and not above ten cents per pound, two and eight-tenths cents per pound; valued above ten cents and not above thirteen cents per pound, three and one-half cents per pound; valued above thirteen cents per pound, forty-five," and in lieu thereof inserting *fifty.*

It was determined in the negative, { Yeas ..... 24 / Nays 26

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.] (Pages 455–456.)

So the amendment was not agreed to.

On motion by Mr. McPherson to amend the bill by striking out in lines 7 and 8, paragraph 133, page 27, the words "two and three-tenths cents per pound," and in lieu thereof inserting *forty-five per centum ad valorem.*

It was determined in the negative, { Yeas ..... 15 / Nays 28

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

A further amendment having been proposed by Mr. Butler * * * (Page 456).

FRIDAY, *August* 8, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes,

And the question being on the amendment yesterday proposed by Mr. Butler * * * (page 459).

SATURDAY, *August* 9, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the amendment proposed by Mr. Butler, viz: At the end of the paragraph 134 insert the following:

And provided further, That hoop or band iron or hoop and band steel used for baling cotton shall be exempt from the operations of this act and shall be taxed at the rate of 35 *per cent. ad valorem, the rate imposed by existing law.*

The yeas were 16 and the nays were 26.

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

The number of Senators voting not constituting a quorum,
The presiding officer (Mr. Moody in the chair) directed the roll to be called; When
Forty-six Senators answered to their names.
A quorum being present, and
The question being again taken on the amendment of Mr. Butler,
It was determined in the negative, { Yeas ..... 16 / Nays 27
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.

On motion by Mr. McPherson, to amend the bill by striking out, after the word "pay," in paragraph 134, page 27, line 24, the following, "two-tenths of one cent per pound more duty than that imposed on the hoop or band iron or steel from which they are made," and in lieu thereof inserting *a duty of thirty-five per centum ad valorem*,
The yeas were 14 and the nays were 24.

On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present.
[Here follow lists of those voting affirmatively and those voting negatively.
The number of Senators voting not constituting a quorum,
The President *pro tempore* directed the roll to be called; When
Forty-eight Senators answered to their names.
A quorum being present, and
The question being again taken on the amendment of Mr. McPherson,
It was determined in the negative, { Yeas ..... 15 / Nays 28
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.

On motion by Mr. Plumb to amend the bill by striking out in paragraph 134, page 27, line 24, the word "two-tenths" and in lieu thereof inserting *one-tenth*.
The yeas were 15 and the nays were 23.

On motion by Mr. Plumb,
The yeas and nays being desired by one-fifth of the Senators present.
[Here follow lists of those voting affirmatively and those voting negatively.]
The number of Senators voting not constituting a quorum,
The President *pro tempore* directed the roll to be called. When
Forty-five Senators answered to their names.
A quorum being present, and
The question being again taken on the amendment of Mr. Plumb.
The yeas were 12 and the nays were 22.
[Here follow lists of those voting affirmatively and those voting negatively.]
No quorum voting * * * (Pages 460–1.)

MONDAY, *August* 11, 1890.

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416), to reduce the revenue and equalize duties on imports, and for other purposes; and
The question being on the amendment proposed by Mr. Plumb to paragraph 134, viz: In line 24, page 27, strike out the word "two-tenths" and in lieu thereof insert *one-tenth*,
The yeas were 18 and the nays were 24.
The yeas and nays having been heretofore ordered,
[Here follow lists of those voting affirmatively and those voting negatively.]
The number of Senators present not constituting a quorum,
The President *pro tempore* directed the roll to be called; when
Fifty-three Senators answered to their names.
A quorum being present, and
The question being again taken on the amendment of Mr. Plumb,
It was determined in the negative, { Yeas ..... 18 / Nays 25
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
The reported amendments having been further agreed to in part, and a further amendment having been proposed by Mr. Vest:
Pending debate, * * * (Page 462.)

TUESDAY, *August* 12, 1890.

* * * * * * *

Mr. Edmunds submitted the following order for consideration; which was ordered to be printed:

Ordered, That during the consideration of House bill 9416, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," no Senator shall speak more than once and not longer than five minutes on or in respect of any one item in said bill or any amendment proposed thereto, without leave of the Senate, such leave to be granted or denied without debate and without any other motion or proceeding other than such as relates to procuring a quorum when it shall appear, on a division, or on the yeas and nays being taken, that a voting quorum is not present. And until said bill shall have been gone through with to the point of a third reading, no general motion in respect of said bill, other than to take it up, shall be in order.

All appeals pending the matter aforesaid shall be determined at once and without debate.

Notice is hereby given, pursuant to Rule XL, that the foregoing order will be offered for adoption in the Senate.

It is proposed to suspend for the foregoing stated purpose the following rules, namely: V, VIII, IX, X, XII, XVIII, XIX, XXII, XXVII, XXVIII, XXXV, and XL.

* * * * * * *

Mr. Quay submitted the following resolution for consideration; which was ordered to be printed:

Resolved, That during the present session of Congress the Senate will not take up for consideration any legislative business other than the pending bill (the tariff bill) and general appropriation bills, bills relating to public buildings and public lands, and Senate or concurrent resolutions.

Resolved, That the consideration of all bills, other than such as are mentioned in the foregoing resolution, is hereby postponed until the session of Congress to be held on the first Monday in December, 1890.

Resolved, That the vote on the pending bill and all amendments thereto shall be taken on the 30th day of August, instant, at 2 o'clock p. m., the voting to continue without further debate until the consideration of the bill and the amendments is completed. (Page 463.)

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize the duties on imports, and for other purposes; and

The question being on the amendment yesterday proposed by Mr. Vest to paragraph 137,

Pending debate, * * * (Page 464.)

WEDNESDAY, *August* 13, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purpose, and

The question being on the amendment proposed by Mr. Vest to paragraph 137,

Pending debate, * * * (Page 466.)

THURSDAY, *August* 14, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the amendment proposed by Mr. Vest, to paragraph 137, viz: In line 6, page 29, strike out the words "two and two-tenths cents," and in lieu thereof insert *one cent*.

After debate,

It was determined in the negative, { Yeas 26
Nays 30

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.
A further amendment having been proposed by Mr. Plumb,
Pending debate,
On motion by Mr. Aldrich, at 6 o'clock and 5 minutes p. m.,
The Senate adjourned. (Page 467.)

SATURDAY, *August* 16, 1890.

* * * * * * *

Mr. Quay gave notice in writing, pursuant to Rule XL, that he would offer the following orders for adoption by the Senate:

Ordered, 1. That during the present session of Congress the Senate will not take up for consideration any legislative business other than the pending bill (H. R. 9416); conference reports; general appropriation bills; pension bills; bills relating to the public lands; to the United States courts; to the postal service; to agriculture and forestry; to public buildings; and Senate or concurrent resolutions.

Ordered, 2. That the consideration of all bills other than such as are mentioned in the foregoing order is hereby postponed until the session of Congress to be held on the first Monday of December, 1890.

Ordered, 3. That a vote shall be taken on the bill (H. R. 9416) now under consideration in the Senate, and upon amendments then pending, without further debate, on the 30th day of August, 1890, the voting to commence at 2 o'clock p. m. on said day and to continue on that and subsequent days, to the exclusion of all other business, until the bill and pending amendments are finally disposed of.

And that it was proposed to modify, for the foregoing stated purpose, the following rules, namely: VII, VIII, IX, X, XII, XIX, XXII, XXVII, XXVIII, XXXV, and XL.

Ordered, That the notice, with the proposed orders, be printed.

REVENUE BILL.

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes;
When,
On motion of Mr. Edmunds,
The Senate proceeded to the consideration of executive business; and (page 471)
After the consideration of executive business the doors were reopened, and,
On motion by Mr. Manderson, at 4 o'clock and 53 minutes p. m.,
The Senate adjourned. (Page 472.)

MONDAY, *August* 18, 1890.

* * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and
The question being on the amendment proposed by Mr. Plumb to paragraph 137,
Pending debate,
On motion by Mr. Cameron, at 6 o'clock p. m.,
The Senate adjourned. (Page 474.)

TUESDAY, *August* 19, 1890.

* * * * * * *

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and
The question being on the amendment proposed by Mr. Plumb to paragraph 137,
Mr. Plumb withdrew the amendment.
The reported amendments having been further agreed to in part,
On motion by Mr. McPherson to amend the bill by striking out, after the word "act," in line 19, paragraph 140, the following words: "All of the above valued at one cent per pound or less, *four-tenths* of one cent per pound; valued above one cent and not above one and four-tenths cents per pound, *five-tenths* of one cent per pound; valued above one and four-tenths cents and not above one and eight-tenths cents per pound, *seven-tenths* of one cent per pound; valued above one and eight-tenths cents and not above two and two-tenths cents per pound, nine-tenths of one cent per

pound: valued above two and two-tenths cents, and not above three cents per pound, one and two-tenths cents per pound: valued above three cents and not above four cents per pound, one and six-tenths cents per pound: valued above four cents and not above seven cents per pound, two cents per pound: valued above seven cents and not above ten cents per pound, two and eight-tenths cents per pound: valued above ten cents and not above thirteen cents per pound, three and one-half cents per pound: valued above thirteen cents and not above sixteen cents per pound, four and two-tenths cents per pound; valued above sixteen cents per pound, seven cents per pound."

And in lieu thereof inserting *thirty-five per centum ad valorem*,

It was determined in the negative, { Yeas ..... 20 / Nays 26

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present.

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. McPherson to amend the bill by inserting after the word "rods," in line 25, paragraph 141, the words *except that with longitudinal ribs for the manufacture of fencing*,

It was determined in the negative, { Yeas ..... 21 / Nays 25

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present.

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Vest to amend the bill by striking out in lines 21 and 24, paragraph 141, the words "six-tenths," and in lieu thereof inserting "five-tenths."

The yeas were 19 and the nays were 16.

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present.

[Here follow lists of those voting affirmatively and those voting negatively.]

The number of Senators voting not consituting a quorum,

The presiding officer (Mr. Platt in the chair) directed the roll to be called,

When

Forty-five Senators answered to their names:

A quorum being present, and

The question being again taken on the amendment proposed by Mr. Vest,

It was determined in the negative, { Yeas ..... 22 / Nays 27

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendment was not agreed to.

On motion by Mr. McPherson to amend the bill in paragraph 142, page 32, as follows: In lines 5 and 6 strike out "one and one-fourth cents," and insert in lieu thereof *one cent*; in line 8 strike out "three-fourths" and insert *one-half*, in lines 10 and 11 strike out "one-fourth," and in line 12 strike out "three" and insert *two and three-fourths*,

It was determined in the negative, { Yeas ..... 17 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present.

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. McPherson, to amend the bill by striking out in line 24, page 33, and in line 1, page 34, the word "forty-five," and in lieu thereof inserting *twenty-five*,

It was determined in the negative, { Yeas ..... 19 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one fifth of the Senators present.

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Vance, to amend the bill by striking out in line 25, paragraph 158, the following words, "One and eight-tenths cents" and in lieu thereof inserting *one cent*,

It was determined in the negative, { Yeas ..... 18 / Nays 26

On motion by Mr. Vance,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
A further amendment to the bill having been proposed by Mr. McPherson,
Pending debate,
On motion by Mr. Aldrich, at 6 o'clock and 6 minutes p. m.,
The Senate adjourned. (Pages 475-476.)

WEDNESDAY, *August* 20, 1890.

* * * * * * *

The president *pro tempore* laid before the Senate the resolution submitted by Mr. Quay on the 18th instant, as follows:

Resolved, That the following orders be adopted for the government of the Senate during the present term of Congress:

Ordered, 1. That during the present session of Congress the Senate will not take up for consideration any legislative business other than the pending bill (H. R. 9416); conference reports; general appropriation bills; pension bills; bills relating to public lands; to the United States courts; to the postal service; to agriculture and forestry; to public buildings; and Senate or concurrent resolutions.

Ordered, 2. That the consideration of all bills other than such as are mentioned in the foregoing order is hereby postponed until the session of Congress to be held on the first Monday of December, 1890.

Ordered, 3. That a vote shall be taken on the bill (H. R. 9416) now under consideration in the Senate and upon amendments then pending without further debate on the 30th day of August, 1890, the voting to commence at 2 o'clock p. m. on said day and to continue on that and subsequent days to the exclusion of all other business until the bill and pending amendments are finally disposed of. (Page 476.)

* * * * * * *

Pending debate,
The President *pro tempore* announced that the hour of 12 o'clock had arrived, and laid before the Senate the unfinished business at its adjournment yesterday, viz, the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and
The Senate resumed, as in Committee of the Whole, the consideration of this bill, and
The question being on the amendment proposed by Mr. McPherson to paragraph 159, viz: After the word "manufactured" in line 7, page 38, strike out "valued at not more than fifty cents per dozen, twelve cents per dozen; valued at more than fifty cents per dozen and not exceeding one dollar and fifty cents per dozen, fifty cents per dozen; valued at more than one dollar and fifty cents per dozen and not exceeding three dollars per dozen, one dollar per dozen; valued at more than three dollars per dozen, two dollars per dozen; and in addition thereto on all the above, fifty," and in lieu thereof insert *forty-five*; and after the word "unfinished" in line 17, strike out "valued at less than four dollars per dozen, one dollar per dozen; valued at four dollars or more per dozen, one dollar and seventy-five cents per dozen; and in addition thereto on all the above razors and razor-blades," and insert *forty-five*,

It was determined in the negative; { Yeas ..... 25 / Nays 32

On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those who voted in the affirmative and those who voted in the negative.]
So the amendment was not agreed to.
On motion by Mr. McPherson to amend the bill by striking out paragraph 159, and in lieu thereof inserting certain words,
After debate,
It was determined in the negative.
On motion by Mr. Hiscock, at 6 o'clock and 7 minutes p. m.,
The Senate adjourned. (Page 477.)

THURSDAY, *August* 21, 1890.

* * * * * * *

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

A further amendment having been proposed by Mr. McPherson, pending debate,
On motion by Mr. Higgins,

* * * * * * *

The Senate adjourned. (Page 479.)

FRIDAY, *August* 22, 1890.

* * * * * * *

On motion by Mr. Aldrich,
The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and
The question being on the amendment proposed by Mr. McPherson, viz: Strike out paragraph 162, and insert in lieu thereof the following: 162. *Files, file-blanks, rasps, and floats, of all cuts and kinds, twenty-five per cent. ad valorem,*
It was determined in the negative, { Yeas ..... 19 / Nays 27
On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
On motion by Mr. McPherson, to amend the bill by striking out in paragraph 166, line 12, the word "fifty" and in lieu thereof inserting *forty*.
It was determined in the negative, { Yeas ..... 19 / Nays 24
On motion by Mr. Aldrich,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting in the affirmative and those voting in the negative.]
So the amendment was not agreed to.
On motion by Mr. McPherson, to amend the bill by striking out in lines 14 and 15, paragraph 167, the words "one cent per pound" and inserting *thirty-five per centum ad valorem*,
It was determined in the negative, { Yeas ..... 18 / Nays 27
On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
On motion by Mr. Vance, to amend the bill by striking out in line 18, paragraph 168, the words "four cents per pound" and in lieu thereof inserting the words *thirty-five per centum ad valorem*,
The yeas were 15 and the yeas were 23.
On motion by Mr. McPherson,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and those voting negatively.]
The number of Senators voting not constituting a quorum,
The President *pro tempore* directed the roll to be called,
When,
Forty-eight Senators answered to their names.
A quorum being present; and
The question being again taken on the amendment of Mr. McPherson,
It was determined in the negative, { Yeas ..... 20 / Nays 29
[Here follow lists of those who voted in the affirmative and those who voted in the negative.]
So the amendment was not agreed to.
On motion by Mr. Vest, to amend the bill in paragraph 177, as follows: In line 1 strike out "eight" and insert *five*; in line 3 strike out "ten" and insert *seven*, and also strike out "fifteen" and insert *twelve*; in line 4 strike out "thirty" and insert *twenty*; and in line 6 strike out "forty" and insert *twenty-five*.
It was determined in the negative, { Yeas ..... 20 / Nays 25
On motion by Mr. Vance,
The yeas and nays being desired by one-fifth of the Senators present,
[Here follow lists of those voting affirmatively and those voting negatively.]
So the amendment was not agreed to.
On motion by Mr. McPherson to amend the bill in paragraph 178, as follows: In line 7, after the words "wood-screws," strike out all down to and including the word

"pound." In line 12, as follows: "more than two inches in length, five cents per pound; over one inch and not more than two inches in length, seven cents per pound; over one-half inch and not more than one inch in length, ten cents per pound; one-half inch and less in length, fourteen cents per pound," and in lieu thereof insert *forty per centum ad valorem.*

It was determined in the negative, { Yeas ..... 15 / Nays 29

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The bill having been further amended on motion of Mr. Aldrich,

Pending debate * * *

The Senate adjourned. (Page 480.)

MONDAY, *August* 25, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue, and equalize duties on imports, and for other purposes, and

On motion by Mr. Coke to amend the bill by striking out the proviso in paragraph 193, and in lieu thereof inserting certain words.

On motion by Mr. Plumb to amend the part proposed to be striken out,

Pending debate * * * (Page 483.)

TUESDAY, *August* 26, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and,

The question being on the amendment proposed by Mr. Plumb to the proviso in paragragh 193, proposed to be stricken out by the amendment of Mr. Coke, viz: In line 2, page 46, strike out the words "one and one-half cents," and in lieu thereof insert *three-fourths of one cent.*

After debate,

It was determined in the negative, { Yeas ..... 18 / Nays 28

On motion by Mr. Reagan,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and of those voting in the negative.]

So the amendment was not agreed to.

The question recurring on the amendment proposed by Mr. Coke, viz: In paragraph 193 strike out the proviso, as follows:

"*Provided*, That silver ore and all other ores containing lead shall pay a duty of 1½ cents per pound on the lead contained therein, according to sample and assay at the port of entry."

And in lieu thereof insert:

Provided, That ores containing silver and lead in which the lead is of less value at the port of entry than the silver, shall be admitted free of duty,

It was determined in the negative, { Yeas ..... 19 / Nays 30

On motion by Mr. Coke,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich, from the Committee on Finance,

On motion by Mr. Aldrich, at 5 o'clock and 52 minutes p. m.,

The Senate adjourned. (Page 484-5.)

WEDNESDAY, *August* 27, 1890.

* * * * * * *

REVENUE BILL.

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and,

After debate,

On motion by Mr. Pasco to amend the bill by striking out in line 23, paragraph 227, the words "any portion" and in lieu thereof inserting *ten per cent.*,

It was determined in the negative, { Yeas ..... 20 / Nays 29

On motion by Mr. Pasco (page 485),

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and in part disagreed to, and the bill further amended on the motion of Mr. Aldrich, from the Committee on Finance,

Pending debate, * * * (Page 486).

THURSDAY, *August* 28, 1890.

* * * * * * *

The President *pro tempore* announced that the hour of 12 o'clock had arrived, and laid before the Senate the unfinished business at its adjournment yesterday, viz: the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The Senate resumed, as in Committee of the Whole, the consideration of the bill, and

The reported amendments having been further agreed to in part and in part disagreed to,

On the question to agree to the following reported amendment, viz: in line 5, page 57, strike out "one-half" and in lieu thereof insert *one-fourth*,

It was determined in the affirmative, { Yeas ..... 38 / Nays 10

On motion of Mr. Aldrich,

The yeas and nays being desired by one fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

On motion of Mr. Carlisle to amend the bill by striking out, in lines 17 and 18, page 57, the words "sugar of milk, eight cents per pound,"

It was determined in the negative, { Yeas ..... 21 / Nays 24

On motion by Mr. Carlisle,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part and in part disagreed to, and the bill further amended on the motion of Mr. Aldrich, from the Committee on Finance, and the motion of Mr. Plumb,

On the question to agree to the following reported amendment, viz, after line 7, page 62, strike out the following:

"Oranges, lemons, or limes, in packages of capacity of 1½ cubic feet or less, 25 cents per package; in packages of capacity exceeding 1½ cubic feet and not exceeding 2½ cubic feet, 50 cents per package; in packages of capacity exceeding 2½ cubic feet and not exceeding 5 cubic feet, $1 per package; in packages of capacity exceeding 5 cubic feet, for every additional cubic foot or fractional part thereof, 20 cents; in bulk, $2.50 per 1,000: *Provided*, That when boxes in which oranges or lemons are imported shall be of shooks manufactured in and exported from the United States, and so verified in accordance with regulations prescribed by the Secretary of the Treasury, there shall be a rebate of the duties on such oranges and lemons of 2 cents for each box of 1½ cubic feet or less capacity and 2 cents for each additional 1½ feet capacity or fractional part thereof."

And in lieu thereof insert:

286. *Oranges, lemons, and limes, in packages of capacity of 1½ cubic feet or less, 13 cents per package; in packages of capacity exceeding 1½ cubic feet and not exceeding 2½ cubic feet, 25 cents per package; in packages of capacity exceeding 2½ cubic feet and not exceeding 5 cubic feet, 50 cents per package; in packages of capacity exceeding 5 cubic feet, for every additional cubic foot or fractional part thereof, 10 cents; in bulk, $1.50 per 1,000.*

It was determined in the affimative, { Yeas ..... 28 / Nays 18

On motion by Mr. Quay.

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

The bill having been further amended on the motion of Mr. Carlisle,

On motion by Mr. McPherson to amend the bill by striking out paragraph 307, in the following words:

"SALT—307. Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds: in bulk, eight cents per one hundred pounds: *Provided*, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and, upon proof that the salt has been used for either of the purposes stated in this proviso, the duties on the same shall be remitted: *Provided further*, That exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars."

The yeas were 13 and the nays were 22.

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

The number of Senators voting not constituting a quorum,

On motion by Mr. Aldrich, at 5 o'clock and 57 minutes p. m.,

The Senate adjourned. (Pages 488–9.)

FRIDAY, *August* 29, 1890.

* * * * * * * *

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and

The question being on the amendment proposed by Mr. McPherson, viz: strike out paragraph 307, in the following words:

"SALT.—[319] 307. Salt in bags, sacks, barrels, or other packages, twelve cents per one hundred pounds: in bulk, eight cents per one hundred pounds: *Provided*, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso, the duties on the same shall be remitted."

It was determined in the negative, { Yeas ..... 15 / Nays 29

The yeas and nays having been heretofore ordered,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

By unanimous consent the question being next taken on agreeing to the amendment reported to paragraph 307, viz: Strike out of the said paragraph the following proviso:

"*Provided further*, That exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats in amounts not less than $100.

It was determined in the negative, { Yeas ..... 15 / Nays 31

On motion by Mr. McMillan,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part and in part disagreed to, and the bill further amended on the motion of Mr. Plumb, the motion of Mr. Aldrich, and the motion of Mr. Carlisle, and

A further amendment having been proposed by Mr. Carlisle,

Pending debate,

On motion by Mr. Aldrich, at 5 o'clock and 45 minutes p. m., the Senate adjourned.

(Page 490.)

SATURDAY, *August* 30, 1890.

* * * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the amendment of yesterday proposed by Mr. Carlisle, viz:

Strike out paragraphs 357 to 639 inclusive, as follows:

"357. All wools, hair of the camel, goat, alpaca, and other like animals shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:

"358. Class 1, that is to say, merino, mestiza, metz, or metis wools, or other wools of merino blood, immediate or remote, Down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes 2 and 3.

"359. Class 2, that is to say, Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, goat, alpaca, and other like animals.

"360. Class 3, that is to say, Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camel's hair, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere, excepting improved wools hereinafter provided for.

"361. The standard samples of all wools which are now or may be hereafter deposited in the principal custom-houses of the United States, under the authority of the Secretary of the Treasury, shall be the standards for the classification of wools under this act, and the Secretary of the Treasury shall have the authority to renew these standards and to make such additions to them from time to time as may be required, and he shall cause to be deposited like standards in other custom-houses of the United States when they may be needed.

"362. Whenever wools of class 3 shall have been improved by the admixture of merino or English blood from their present character as represented by the standard samples now or hereafter to be deposited in the principal custom-houses of the United States, such improved wools shall be classified for duty either as class 1 or as class 2, as the case may be.

"363. The duty on wools of the first class which shall be imported washed, shall be twice the amount of the duty to which they would be subjected if imported unwashed; and the duty on wools of the first and second classes which shall be imported scoured shall be three times the duty to which they would be subjected if imported unwashed.

"364. Unwashed wools shall be considered such as shall have been shorn from the sheep without any cleansing; that is, in their natural condition. Washed wools shall be considered such as have been washed with water on the sheep's back. Wool washed in any other manner than on the sheep's back shall be considered as scoured wool.

"365. The duty upon wool of the sheep or hair of the camel, goat, alpaca, and other like animals, which shall be imported in any other than ordinary condition, or which shall be changed in its character or condition for the purpose of evading the duty, or which shall be reduced in value by the admixture of dirt, or any other foreign substance, or which had been sorted or increased in value by the rejection of any part of the original fleece, shall be twice the duty to which it would be otherwise subject: *Provided*, That skirted wools as now imported are hereby excepted. Wools on which a duty is assessed amounting to three times or more than that which would be assessed if said wool was imported unwashed, such duty shall not be doubled on account of its being sorted. If any bale or package of wool or hair specified in this act imported as of any specified class, or claimed by the importer to be dutiable as of any specified class, shall contain any wool or hair subject to a higher rate of duty than the class so specified, the whole bale or package shall be subject to the highest rate of duty chargeable on wool of the class subject to such higher rate of duty, and if any bale or package be claimed by the importer to be shoddy, mungo, flocks, wool, hair, or other material of any class specified in this act, and such bale contain any admixture of any one or more of said materials, or of any other material, the whole bale or package shall be subject to duty at the highest rate imposed upon any article in said bale or package.

"365. The duty upon all wools and hair of the first class shall be 11 cents per pound, and upon all wools or hair of the second class 12 cents per pound.

"367. On wools of the third class and on camel's hair of the third class, the value whereof shall be 13 cents or less per pound, including charges, the duty shall be 32 per cent. ad valorem.

"368. On wools of the third class and on camel's hair of the third class, the value whereof shall exceed 13 cents per pound, including charges, the duty shall be 50 per cent. ad valorem.

"369. Wools on the skin shall pay the same rate as other wools, the quantity and value to be ascertained under such rules as the Secretary of the Treasury shall prescribe."

It was determined in the negative, { Yeas ..... 17 / Nays 27

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follows lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On the question to agree to the amendment reported to paragraph 373, viz: In line 22, page 88, strike out the word "twice" and in lieu thereof insert *two and one-half times*,

Pending debate,

On motion by Mr. Stewart * * * (page 493).

MONDAY, *September* 1, 1890.

* * * * * * * *

REVENUE BILL.

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the amendment reported to paragraph 373, viz: In line 22, page 88, strike out the word "twice" and in lieu thereof insert *two and one-half times*.

After debate,

It was determined in the affirmative, { Yeas ..... 26 / Nays 18

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

On motion by Mr. McPherson to amend the bill in paragraph 373, as follows: On page 88, line 24, strike out "thirty-five" and insert *twenty-five;* page 89, line 3, strike out "thirty-five" and insert *thirty;* and in line 7, same page, strike out "forty" and insert *thirty-five*.

It was determined in the negative, { Yeas ..... 16 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On the question to agree to the amendment reported to paragraph 374, viz: In line 14, page 89, strike out "twice" and insert *three times*.

It was determined in the affirmative, { Yeas ..... 28 / Nays 17

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

On motion by Mr. McPherson to amend paragraph 374 as follows: On page 89, line 16, strike out the word "forty" and insert *thirty;* line 18, strike out the words "and one-half;" line 20, strike out "forty" and insert *thirty;* line 21, strike out "four" and insert *three;* and in line 53, strike out "fifty" and insert *thirty-five*.

It was determined in the negative, { Yeas ..... 18 / Nays 25

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Carlisle,

On motion by Mr. McPherson to amend paragraph 375 as follows: On page 90, line 9, strike out the word "twice" and insert *one and one-half times;* line 11, strike out "forty" and insert *thirty;* line 12, strike out "three times" and insert *twice;* line 15, strike out "thirty-five" and insert *thirty;* line 19, strike out "three" and insert *two;* line 21, strike out "forty" and insert *thirty-five;* and after the word "valorem," in line 21, strike out the following: "Flannels composed wholly or in part of wool, the hair of the camel, goat, alpaca, or other animals, valued at above fifty cents per pound, shall be classified and pay the same duty as women's and children's dress goods, coat linings, Italian goods, and goods of similar character and description provided by this act."

It was determined in the negative, { Yeas ..... 16 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Carlisle to amend paragraph 376 as follows: Strike out the word "fifteen," where it occurs in lines 8 and 11, page 91, and insert in lieu thereof *twenty;* and after the word "yard," in line 14, same page, insert the words *valued at more than twenty cents per square yard,*

It was determined in the negative, { Yeas ..... 19 / Nays 26

On motion by Mr. Carlisle,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich from the Committee on Finance,

On motion by Mr. Aldrich, at 5 o'clock and 45 minutes p. m.,

The Senate adjourned. (Pages 494–5.)

TUESDAY, *September* 2, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

Pending debate,

The hour of half-past 5 o'clock having arrived. * * * (Page 496.)

WEDNESDAY, *September* 3, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and,

Pending debate,

The hour of half-past 5 o'clock having arrived,

The Senate, in pursuance of its order, took a recess until 8 o'clock p. m. (Page 497.)

THURSDAY, *September* 4, 1890.

* * * * * * *

REVENUE BILL.

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich,

On the question to agree to the amendment reported on pages 78 and 79, viz: Strike out paragraph 336 and in lieu thereof insert certain words,

On motion by Mr. Aldrich to amend the part proposed to be inserted,

It was determined in the affirmative.

On motion by Mr. McPherson to amend the amendment by inserting, in lieu of the part proposed to be inserted by the committee as amended, the following:

336. *On stockings, hose, and half-hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines and frames, or knit by hand, and composed of cotton or other vegetable fiber, finished or unfinished, such as are commercially known as seamless stockings, hose, or half-hose, and on all shirts and drawers composed of cotton or other vegetable fiber, 40 per cent.*

It was determined in the negative, { Yeas ..... 20 / Nays 27

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

The question recurring on agreeing to the amendment reported by the committee as amended,

It was determined in the affirmative.

On the question to agree to the following reported amendment, viz: In paragraph 340, lines 10 and 11, page 80, strike out the words "one and one-half cents per pound" and in lieu thereof insert *twenty dollars per ton*,

It was determined in the affirmative, { Yeas ..... 32 / Nays 14

On motion by Mr. Washburn,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and of those who voted in the negative.]

So the amendment was agreed to.

On the question to agree to the amendment reported in paragraph 341, viz: In lines 12 and 13, page 80, strike out the words "four cents per pound" and in lieu thereof insert *forty dollars per ton*,

It was determined in the affirmative, { Yeas ..... 33 / Nays 16

On motion by Mr. Wilson, of Iowa,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part,

On the question to agree to the amendments reported to paragraph 345, viz: In line 24, page 80, after the word "cordage" insert the words *binding twine*, and in line 1, page 81, strike out the words "binding twine, one and one-fourth cents per pound."

Mr. Aldrich, on behalf of the committee, withdrew the amendments.

On motion by Mr. Davis to amend paragraph 345 by inserting after the word "twine," in line 24, page 80, the words *except binding twine*, and by striking out in line 1, page 81, the words "binding twine, one and one-fourth cents per pound,"

It was determined in the affirmative, { Yeas ..... 34 / Nays 24

On motion by Mr. Davis,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

On motion by Mr. McPherson to amend paragraph 347, by striking out the word "jute" whenever it appears in line 9, and in line 12, after the word "pound," insert the words *burlaps of jute and bags for grain made of jute burlaps, twenty-five per centum ad valorem*,

It was determined in the negative, { Yeas ..... 24 / Nays 31

On motion by Mr. Aldrich,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The reported amendments to paragraph 349 having been agreed to,

On motion by Mr. Vance to strike out the said paragraph as amended, as follows:

"349. Bagging for cotton, gunny cloth, and all similar material, suitable for covering cotton, composed in whole or in part of hemp, flax, jute, or jute butts, valued

at six cents or less per square yard, one and *three-tenths cents* per square yard; valued at more than six cents per square yard, one and *five-tenths* cents per square yard."

It was determined in the negative, { Yeas ..... 24 / Nays 31

On motion by Mr. Berry,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively, and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. Vest to amend paragraph 354 by striking out in line 16, page 83, the words "fifteen cents per dozen pieces and thirty-five" and inserting the word *thirty*, and by striking out in lines 17 and 18 the words "thirty cents per dozen pieces and thirty-five," and in lieu thereof inserting the word *forty*.

It was determined in the negative, { Yeas ..... 17 / Nays 29

On motion by Mr. McPherson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part and in part disagreed to, and the bill further amended on the motion of Mr. Aldrich, from the Committee on Finance.

On motion by Mr. Sawyer,

The Senate proceeded to the consideration of executive business. (Pages 498-9.)

FRIDAY, *September* 5, 1890.

* * * * * * *

REVENUE BILL.

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and

On motion by Mr. Vance to amend the bill by striking out the proviso in paragraph 457, as follows: "*Provided*, That no such animal shall be admitted free except it be pure bred or of a recognized breed, and has been duly registered in the book of record established for that breed: *And provided further*, That certificate of such record and of the pedigree of such animal shall be produced and submitted to the customs officer, duly authenticated by the proper custodian of such book of record, together with the affidavit of the owner, agent, or importer that such animal is the identical animal described in said certificate of record and pedigree. The Secretary of the Treasury may prescribe such additional regulations as may be required for the strict enforcement of this provision."

It was determined in the negative, { Yeas ..... 22 / Nays 34

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendment was not agreed to.

On motion by Mr. Plumb to amend the bill by striking out after the word "valorem," in line 20, page 106, the following words, "And in addition to the above rates there shall be paid on all men's gloves one dollar per dozen,"

It was determined in the negative, { Yeas ..... 22 / Nays 30

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on motion of Mr. Quay, the motion of Mr. Manderson, the motion of Mr. Aldrich, and the motion of Mr. Hoar,

On motion of Mr. Vance to amend the bill by striking out paragraph 450, as amended, as follows:

"540. Fashion-plates, engraved on steel, copper, or wood, colored or plain."

It was determined in the negative, { Yeas ..... 19 / Nays 26

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part,

On motion by Mr. Davis to amend the bill by inserting after the word "act," in line 16, page 120, the words, "*all binding twine manufactured in whole or in part from istle or Tampico fiber, manilla, sisal-grass, or sunn.*"

On motion by Mr. Vance to amend the amendment by adding thereto the following: "*bagging made of jute, manilla, sisal, or other fiber, except hemp or flax, for wrapping cotton bales.*"

It was determined in the negative, { Yeas ..... 19 / Nays 26

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting in the affirmative and those voting in the negative.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Jones, of Arkansas, to amend the amendment proposed by Mr. Davis, by adding thereto the following, *and burlaps and bags for grain made of burlaps,*

It was determined in the negative, { Yeas ..... 26 / Nays 28

On motion by Mr. Jones, of Arkansas,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negaative.]

So the amendment to the amendment was not agreed to.

The question recurring on agreeing to the amendment proposed by Mr. Davis,

It was determined in the affirmative, { Yeas ..... 38 / Nays 18

On motion by Mr. Davis,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

On motion by Mr. Plumb to amend paragraph 579 by striking out in lines 7 and 8, page 121, the following words, "hides, raw or uncured, whether dry, salted, or pickled,"

It was determined in the negative, { Yeas ..... 14 / Nays 30

On motion of Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part,

On motion by Mr. Vest to amend the bill by inserting after paragraph 612 the following:

Timber, hewn and sawed, squared and sided, and sawed boards, plank, deals, and other lumber of hemlock, whitewood, sycamore, white pine, and bass wood,

On motion by Mr. Manderson to amend the proposed amendment by striking out the words "hemlock, whitewood, sycamore," and also the words "and bass wood,"

It was determined in the negative, { Yeas ..... 3 / Nays 48

On motion by Mr. Washburn,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment to the amendment was not agreed to.

The question recurring upon agreeing to the amendment proposed by Mr. Vest,

It was determined in the negative, { Yeas ..... 24 / Nays 30

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. Plumb to amend the bill by inserting after paragraph 612 the following:

Sawed boards, plank, deals, and other lumber of white pine,

It was determined in the negative, { Yeas ..... 22 / Nays 33

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and in part disagreed to, and the bill further amended on the motion of Mr. Aldrich, and the motion of Mr. Plumb,

On the question to agree to the following reported amendment, viz: After paragraph 623 insert 624, *Mica*,

It was determined in the negative, { Yeas ..... 21 / Nays 34

On motion by Mr. Edmunds,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Quay to amend the bill by striking out paragraph 665 as follows: "665. Quinia, sulphate of, and all alkaloids or salts of cinchona bark,"

It was determined in the negative, { Yeas ..... 15 / Nays 38

On motion by Mr. Harris,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part, and in part disagreed to, and the bill further amended on the motion of Mr. Carlisle, the motion of Mr. Plumb, the motion of Mr. Aldrich, from the Committee on Finance, the motion of Mr. Hiscock, and the motion of Mr. Hawley.

On motion by Mr. Aldrich, at 6 o'clock p. m., the Senate adjourned. (Pages 500-1.)

SATURDAY, *September* 6, 1890.

REVENUE BILL.

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports and for other purposes, and having been further amended on the motion of Mr. Manderson,

On the question to agree to the following reported amendment, viz: In line 10, page 130, insert 637, *sponges*.

It was determined in the negative, { Yeas ..... 16 / Nays 36

On motion by Mr. Quay,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The reported amendments having been further agreed to in part and in part disagreed to, and the bill further amended on the motion of Mr. Aldrich and the motion of Mr. Gibson,

On motion by Mr. Vest to further amend the bill by inserting after paragraph 672, page 128, the word *salt*,

It was determined in the negative, { Yeas ..... 26 / Nays 34

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Vance, to amend the bill by inserting after paragraph 390, page 94, the following:

SEC. —. *That in all cases where it can be shown by proof satisfactory to the Secretary of the Treasury that any goods, wares, or merchandise imported into this country have been purchased abroad by any citizen of the United States by exchange of farm products grown in the United States for such goods, or where such goods have been purchased with the proceeds or avails of such farm products in foreign countries, such goods, wares, or merchandise shall be imported at the following rates of duty, to wit: One-half of the present duty on all manufactures of iron and steel; 40 per cent. of the present duty on all woolen and cotton goods, or articles of which wool or cotton may be the component material of chief value; one-half the present duty on earthenware, china, and glassware; 30 per cent. of the present rate of duty on all material used for fertilizers or in the manufacture thereof, and 25 per cent. of the present duty on jute bagging and farmers' binding twine.*

SEC. —. *That it shall be the duty of the Secretary of the Treasury to adopt such rules and regulations as may be necessary to carry into effect the provisions of this act.*

It was determined in the negative, { Yeas ..... 23 / Nays 30

On motion by Mr. Vance,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

The bill having been further amended on the motion of Mr. Spooner, and the motion of Mr. Aldrich,

On motion by Mr. Gray to amend the bill by striking out after the word "all" in line 5, section 7, the following words "lumber, timber, hemp, manilla, wire rope, and iron and steel rods, bars, spikes, nails, plates, angles, beams, and bolts, and copper and composition metal," and inserting the following: *articles and materials.*

It was determined in the negative, { Yeas ..... 22 / Nays 29

On motion by Mr. Aldrich,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

The bill having been further amended on the motion of Mr. Frye, the motion of Mr. Gray, and the motion of Mr. Evarts,

On the question to agree to the following reported amendment, viz: Strike out sections 25 and 26 as follows:

"SEC. 25. That on and after the 1st day of May, 1891, all special taxes imposed by the laws now in force upon dealers in leaf tobacco, retail dealers in leaf tobacco, dealers in tobacco, manufacturers of tobacco, manufacturers of cigars, and peddlers of tobacco are hereby repealed.

"Every such dealer in leaf tobacco, retail dealer in leaf tobacco, manufacturer, and peddler shall, however, register with the collector of the district his name or style, place of residence, trade, or business, and the place where such trade or business is to be carried on, the same as though the tax had not been repealed, and a failure to register as herein required shall subject such person to a penalty of $50.

"SEC. 26. That on and after the 1st day of May, 1891, all provisions of the statutes imposing restrictions of any kind whatsoever upon farmers and growers of tobacco in regard to the sale of their leaf tobacco, and the keeping of books, and the registration and report of their sales of leaf tobacco, or imposing any tax on account of such sales are hereby repealed."

It was decided in the affirmative, { Yeas ..... 24 / Nays 21

On motion of Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

The reported amendment having been further agreed to in part, and the bill further amended on the motion of Mr. Hoar and the motion of Mr. Aldrich,

Pending debate, * * * (page 563.)

MONDAY, *September* 8, 1890.

* * * * * * *

REVENUE BILL.

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and having been further amended on the motion of Mr. Aldrich, from the Committee on Finance,

On motion by Mr. Plumb to amend the bill by inserting as an additional section the following:

That from and after the passage of this act there shall be levied and collected on all distilled spirits hereafter produced or withdrawn from bond in the United States a tax of one dollar and twenty-five cents on each proof gallon, or wine gallon when below proof, to be paid by the distiller, owner, or person having possession thereof, before removal from the distillery bonded warehouse.

It was determined in the negative, { Yeas ..... 17 / Nays 39

On motion of Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On the question to agree to the following reported amendment, viz: After line 23, page 53, insert the following:

All sugars above number thirteen Dutch standard in color should be classified by the Dutch standard of color and shall pay duty as follows, namely: All sugars above number thirteen and not above sixteen Dutch standard of color, three-tenths of one cent per pound,

It was determined in the affirmative, { Yeas ..... 39 / Nays 12

On motion by Mr. Sherman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

On the question to agree to the following reported amendment, viz: In line 5, page 54, strike out "four-tenths" and insert *six-tenths*,

It was determined in the affirmative, { Yeas ..... 29 / Nays 23

On motion by Mr. Pugh,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

The reported amendments having been further agreed to in part, and the bill further amended on the motion of Mr. Aldrich,

On the question to agree to the following reported amendment, viz: After the word "States," in line 15, page 51, insert the words *or from maple sap produced within the United States*,

It was determined in the affirmative, { Yeas ..... 30 / Nays 25

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in theaffirmative and those who voted in the negative.]

So the amendment was agreed to.

The reported amendments having been further agreed to in part,

On motion by Mr. Frye to amend the bill by inserting after the word "pound," in line 17, page 51, the following:

To the producer of sugar of like test from imported molasses, a bounty of one cent per pound.

Pending debate,

On motion by Mr. Aldrich that the Senate take a recess from half-past 5 until 8 o'clock p. m.,

It was determined in the affirmative, { Yeas ..... 48 / Nays 13

On motion by Mr. Cameron,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the motion was agreed to.

The question recurring on the amendment proposed by Mr. Frye,

It was determined in the negative.

A further amendment having been proposed by Mr. Manderson,

On motion by Mr. Eustis to amend the amendment,

Pending debate,

The hour of half past 5 o'clock having arrived,

The Senate, in pursuance of its order, took a recess until 8 o'clock p. m.

AT EIGHT O'CLOCK P. M.

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and,

The question being on the amendment proposed by Mr. Eustis to the amendment of Mr. Manderson,

After debate,

It was determined in the negative.

The question recurring on agreeing to the amendment proposed by Mr. Manderson, viz: After line 9, page 54, insert the following:

That all machinery purchased abroad and erected in a beet-sugar factory for the manufacture of beet sugar in the United States from beets produced therein shall be admitted duty free until the 1st day of July, 1892: Provided, That any duty collected on any of the above-described machinery purchased abroad and imported into the United States for the uses above indicated since January 1, 1890, shall be refunded.

It was determined in the affirmative, { Yeas ..... 43 / Nays 12

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was agreed to.

A further amendment having been proposed by Mr. Gibson,

Pending debate,

On motion by Mr. Pasco, at 12 o'clock and 15 minutes a. m. (Tuesday),

The Senate adjourned. (Pages 507–8.)

TUESDAY, *September* 9, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed, as in Committee of the Whole, the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being on the amendment proposed by Mr. Gibson, viz: In line 13, page 51, strike out the word "eighty" and insert *seventy-six*,

It was determined in the negative.

The bill having been further amended on the motion of Mr. Plumb,

On motion by Mr. Carlisle to amend the bill by striking out, in Schedule E, the following:

"That until July the first, nineteen hundred and five, there shall be paid, from any moneys in the Treasury not otherwise appropriated, under the provisions of section three thousand six hundred and eighty-nine of the Revised Statutes, to the producer of sugar testing not less than eighty degrees by the polariscope, from beets, sorghum, or sugar-cane grown within the United States, or from maple sap produced within the United States, a bounty of two cents per pound, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

"The producer of said sugar to be entitled to said bounty shall have first filed prior to July first of each year with the Commissioner of Internal Revenue a notice of the place of production, with a general description of the machinery and methods to be employed by him, with an estimate of the amount of sugar proposed to be produced in the current or next ensuing year, including the number of maple trees to be tapped, and an application for a license to so produce, to be accompanied by a bond in a penalty, and with sureties to be approved by the Commissioner of Internal Revenue, conditioned that he will faithfully observe all rules and regulations that shall be prescribed for such manufacture and production of sugar.

"The Commissioner of Internal Revenue, upon receiving the application and bond hereinbefore provided for, shall issue to the applicant a license to produce sugar from sorghum, beets, or sugar-cane grown within the United States or from maple sap produced within the United States at the place and with the machinery and by the methods described in the application; but said license shall not extend beyond one year from the date thereof.

"No bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, or produced in the United States upon which the bounty herein provided for has already been paid or applied for, nor to any person unless he shall have first been licensed as herein provided, and only upon sugar produced by such person from sorghum, beets, or sugar-cane grown within the United States, or from maple sap produced within the United States. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall from time to time make all needful rules and regulations for the manufacture of sugar from sorghum, beets, or sugar-cane grown within the United States, or from maple sap produced within the United States, and shall, under the direction of the Secretary of the Treasury, exercise supervision and inspection of the manufacture thereof.

"And for the payment of these bounties the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounties shall be disbursed, and no bounty shall be allowed

or paid to any person licensed as aforesaid in any one year upon any quantity of sugar less than five hundred pounds.

"That any person who shall knowingly refine or aid in the refining of sugar imported into the United States upon which the bounty herein provided for has already been paid or applied for, at the place described in the license issued by the Commissioner of Interal Revenue, and any person not entitled to the bounty herein provided for who shall apply for or receive the same, shall be guilty of a misdemeanor, and, upon conviction thereof, shall pay a fine not exceeding five thousand dollars, or be imprisoned for a period not exceeding five years, or both, in the discretion of the court."

It was determined in the negative, { Yeas ..... 23 / Nays 34

On motion by Mr. Carlisle,

The yeas and nays being desired by one-fifth of the Senators present.

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Gibson to amend the bill by striking out Schedule E and inserting in lieu thereof the following:

SCHEDULE E.—SUGAR.

All sugars not above number thirteen Dutch standard in color shall pay duty on their polariscopic test as follows, namely:

All sugars not above thirteen Dutch standard in color, all tank bottoms, sirup of cane juice or of beet juice, melada, concentrated melada, concrete, and concentrated molasses, testing by the polariscope not above seventy-five degrees, shall pay a duty of one and fifteen hundredths cents per pound, and for every additional degree or fraction of a degree shown by the polariscopic test they shall pay thirty-two thousandths of a cent per pound additional.

All sugars above number thirteen Dutch standard in color shall be classified by the Dutch standard of color and pay duty as follows, namely:

All sugars above number thirteen and not above number sixteen Dutch standard, two and twenty hundredths cents per pound.

All sugars above number sixteen and not above number twenty Dutch standard, two and forty hundredths cents per pound.

All sugars above number twenty Dutch standard, two and eighty hundredths cents per pound.

Molasses testing not above fifty-six degrees by the polariscope shall pay a duty of three cents per gallon; molasses testing above fifty-six degrees shall pay a duty of six cents per gallon.

Sugar candy, not colored, five cents per pound.

All other confectionery, forty per centum ad valorem.

It was determined in the negative, { Yeas ..... 25 / Nays 35

On motion by Mr. Gibson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So the amendment was not agreed to.

On motion by Mr. Aldrich to amend the bill by inserting at the end of section 31, page 178, the following proviso:

Provided, That imported merchandise deposited in any public or private bonded warehouse, having been so deposited prior to the 1st day of August, 1890, may be withdrawn for consumption at any time prior to November 1, 1890, upon the payment of duties at the rates in force prior to the passage of this act.

On motion by Mr. Plumb to amend the amendment by striking out all after the word "Provided" and in lieu thereof inserting the following:

That goods in bond at the date of the taking effect of this act may be withdrawn therefrom at any time within one year from the said date, on the payment of the duties existing at the time of their importation.

It was determined in the negative, { Yeas ..... 28 / Nays 34

On motion by Mr. Harris,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to. (Page 509.)

The question recurring on agreeing to the amendment proposed by Mr. Aldrich,

It was determined in the affirmative, { Yeas ..... 32 / Nays 27

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was agreed to.

On motion by Mr. Aldrich to amend the bill by inserting, as an additional section, the following:

SEC. 2. *That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose on and after the first day of July, eighteen hundred and ninety-one, whenever, and so often as the President shall be satisfied that the government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just, and in such case and during such suspension duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country as follows, namely:*

All sugars not above number thirteen Dutch standard in color shall pay duty on their polariscopic test as follows, namely:

All sugars not above thirteen Dutch standard in color, all tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete and concentrated molasses, testing by the polariscope not above seventy-five degrees, seven-tenths of one cent per pound; and for every additional degree or fraction of a degree shown by the polariscopic test, two hundredths of one per cent per pound additional.

All sugars above number thirteen Dutch standard in color shall be classified by the Dutch standard of color, and pay duty as follows, namely: All sugar above number thirteen and not above number sixteen Dutch standard of color, one and three-eighths cents per pound.

All sugar above number sixteen and not above number twenty Dutch standard of color, one and five-eighths cents per pound.

All sugars above number twenty Dutch standard of color, two cents per pound.

Molasses testing above fifty six degrees, four cents per gallon.

Sugar drainings and sugar sweepings shall be subject to duty either as molasses or sugar, as the case may be, according to polariscopic tests.

On coffee, three cents per pound.

On tea, ten cents per pound.

Hides, raw and uncured, whether dry, salted, or pickled. Angora goat-skins, raw, without the wool, unmanufactured, asses' skins, raw or unmanufactured, and skins, except sheepskins with the wool on, one and one-half cents per pound.

On motion by Mr. Evarts to amend the amendments as follows, viz: In lines 2 and 3 strike out the words "on and after the first day of July, eighteen hundred and ninety-one," and strike out all after the word "shall," in line 10, and insert the following:

Communicate to Congress the facts which he shall have ascertained, to the end that such duties may be imposed upon the above-recited articles and exempted from duty by this act as Congress, in view of the failure of reciprocal action on the part of any foreign nation or nations, shall determine, so as to read:

SEC. 2. *That the exemptions from duty of sugar, molasses, coffee, tea, and hides provided for in this act are made with a view to secure reciprocal trade with countries producing these articles, and for this purpose whenever and so often as the President shall be satisfied that the government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States which, in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall communicate to Congress the facts which he shall have ascertained, to the end that such duties may be imposed upon the above-recited articles and exempted from duty by this act as Congress, in view of the failure of reciprocal action on the part of any foreign nation or nations, shall determine.*

It was determined in the negative, { Yeas 30
Nays 34

On motion by Mr. Carlisle,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Edmunds to amend the amendment proposed by Mr. Aldrich as follows, viz: Strike out from line 1 to line 21, inclusive, the following:

"SEC. 2. That the exemptions from duty of sugar, molasses, coffee, tea, and hides, provided for in this act, are made with a view to secure reciprocal trade with countries producing these articles; and for this purpose, on and after the first day of July,

eighteen hundred and ninety-one, whenever and so often as the President shall be satisfied that the government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugars, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just, and in such case and during such suspension duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country as follow, namely:"

After line 48 strike out the following:

"Hides, raw or uncured, whether dry, salted or pickled, Angora goat-skins, raw, without the wool, unmanufactured, asses' skins, raw or unmanufactured, and skins, except sheep-skins, with the wool on, one and one-half cents per pound," and

At the end of the amendment insert the following:

Whenever the President of the United States shall be satisfied that any country producing the sugar, coffee, tea, or any of them in this section mentioned, and whence they are exported to the United States, has abolished its duties and taxes upon the importation directly from the United States of the principal agricultural products of the United States, he may, by proclamation, remit the duties imposed by law upon the first before-mentioned articles or any class thereof produced in and exported direct from any such country to the United States for such period of time as he shall think fit, so long as such products of the United States are admitted free of duty or tax into such country, and no longer.

It was determined in the negative, { Yeas ..... 6 / Nays 59

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Edmunds to amend the amendment of Mr. Aldrich by striking out in lines 2 and 3 the words "on and after the first day of July, eighteen hundred and ninety-one."

It was determined in the negative, { Yeas ..... 29 / Nays 34

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Gibson to amend the amendment of Mr. Aldrich by inserting after the word "sugar," where it occurs in lines 7, 11, 16, and 19, the word *wool*, and at the end of the amendment inserting the following: *On wool as provided by existing law.* (Page 510.)

It was determined in the negative, { Yeas ..... 19 / Nays 83

On motion by Mr. Gibson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

On motion by Mr. Gray to amend the amendment of Mr. Aldrich by striking out the whole of the said amendment and in lieu thereof inserting the following:

SEC. —. *And the President of the United States is hereby directed, without further legislation, to declare the ports of the United States free and open to all the products of any country of the American Hemisphere upon which no export duties are imposed whenever and so long as the Government of such country shall admit to the ports of such country, free of all national, provincial (State), municipal, and other taxes, flour, corn-meal, and other breadstuffs, preserved meats, fish, vegetables and fruits, cotton-seed oil, rice, and other provisions, including all articles of food, lumber, furniture, and all other articles of wood, agricultural implements and machinery, mining and mechanical machinery, vessels or boats of iron, steel, or wood, structural steel and iron, steel rails, locomotives, railway cars, and supplies, street cars refined petroleum, or such other products of the United States as may be agreed upon.*

It was determined in the negative, { Yeas ..... 26 / Nays 38

On motion by Mr. Gorman,

The yeas and nays being desired by one fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

The question recurring on agreeing to the amendment proposed by Mr. Aldrich, from the Committee on Finance,

It was determined in the affirmative, { Yeas ..... 37 / Nays 28

On motion by Mr. Hale,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was agreed to.

On motion by Mr. Aldrich to amend the bill by inserting after line 19, page 54,

That the provisions of Schedule E and of paragraph No. 708 of the free list of this act, providing terms for the admission of imported sugars and molasses and for the payment of a bounty on sugars of domestic production, shall take effect on the 1st day of March, 1891: Provided, That on and after the 1st day of February, 1891, and prior to the 1st day of March, 1891, sugars may be refined in bond without payment of duty, and such refined sugars may be transported in bond and stored in bonded warehouse at such points of destination as are provided in existing laws relating to the immediate transportation of dutiable goods in bond, under such rules and regulations as shall be prescribed by the Secretary of the Treasury.

On motion by Mr. Gibson to amend the amendment by striking out the word "March" where it occurs and insert *June*, and by adding thereto the following:

That the existing tariff law in respect of sugars shall remain in force until the first day of July, 1891.

It was determined in the negative, { Yeas ..... 27 / Nays 34

On motion by Mr. Gibson,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment to the amendment was not agreed to.

The question occurring on agreeing to the amendment proposed by Mr. Aldrich,

It was determined in the affirmative.

The bill having been further amended, on the motion of Mr. Aldrich, from the Committee on Finance,

On the question to agree to the following-reported amendment, viz: In line 21, page 130, strike out the word "sixteen" and in lieu thereof insert *thirteen*,

It was determined in the affirmative, { Yeas ..... 35 / Nays 25

On motion by Mr. Sherman,

The yeas and nays being desired by one fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was agreed to.

On motion by Mr. Plumb to amend the bill by inserting as additional sections the following:

SEC. —. *That on and after the first day of July, eighteen hundred and ninety-one, there shall be annually levied, collected, and paid, under such regulations and forms as may be prescribed by the Commissioner of Internal Revenue, by and with the approval of the Secretary of the Treasury, a tax of three per centum upon the dividends, including interest on all bonds, whether cash, scrip, stock, or otherwise, of all corporations, of whatever character or nature, transacting business upon corporate functions authorized or to be authorized by any law, Federal, State, county, Territorial, or municipal, which tax shall be annually collected from the said corporations: Provided, That all dividends so made liable to said tax, other than cash dividends, shall be estimated at the actual value thereof.*

SEC. —. *That it shall be the duty of every such corporation to make due returns of all dividends in such form and manner as may be prescribed by the Commissioner of Internal Revenue, and in default of such returns it shall be lawful for the Commissioner of Internal Revenue to make estimate thereof upon the best information he can obtain. And for any neglect or refusal to make said returns or payment thereupon, any such corporation so in default shall pay a penalty of one thousand dollars, in addition to other penalties and forfeitures prescribed by law for violation of internal-revenue provisions.*

SEC. —. *That it shall be lawful for said corporations to withhold from the beneficiary or beneficiaries of any such dividend or dividends the amount of tax so levied and to be collected and paid under the provisions hereof.*

It was determined in the negative, { Yeas ..... 26 / Nays 31

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. Plumb to amend the bill by inserting, as an additional section, the following:

SEC. 32. *If, upon the proceedings hereinafter provided for, it shall appear, to the satis-*

faction of any circuit or district court of the United States; that the manufacture and production or distribution of similar articles of domestic production or of the articles of domestic manufacture and production with which an imported article comes into competition is controlled by a single corporation, firm or individual or by any combination or agreement between corporations, firms, or individuals engaged in the manufacture, production, sale, or distribution of such domestic article, so as to produce either of the following results, namely: The establishment of arbitrary and prescribed prices for such articles of domestic manufacture or production, or the arbitrary and artificial restriction or limitation of the production or sale of such article, or the suspension of competition in the sale, distribution, manufacture, or production of such domestic articles, then the importer of such competing articles shall be entitled to receive his goods free from duty.

Any importer desiring to procure the admission of imported articles free as hereinbefore contemplated may file his petition in the circuit or district court of the United States for the district in which the port of entry is situate. In the petition he shall set forth the facts upon which he bases his said application, and in which he shall name the person or persons, firms, or corporations claimed by him to exercise such control, or to be engaged in such combination or agreement as hereinbefore named; and notice of the filing of such petition shall be given to said persons, firms, and corporations; a copy of the said petition shall also be served on the district attorney of the United States for the district in which such proceeding is commenced; and it shall be the duty of the said district attorney to appear and defend the interests of the Government of the United States, and all proceedings in respect of the matters herein provided for shall be under such rules as the court may prescribe.

The petitioner, upon the filing of such petition, shall be required to give bond, with sureties to be approved by the court, for the prompt payment of the duties levied herein upon the articles imported, and all costs of procedure before the court, if he shall fail to establish to the satisfaction of the court that such domestic articles are controlled as in this act specified; and upon the filing of such bond he shall be entitled to the delivery of such imported goods from the custom-house without the payment of duty.

If, upon the final hearing of said petition, the court shall adjudge that the said goods are entitled to admission free of duty as herein contemplated, such judgment of the court shall operate as a discharge of liability for the payment of such duties, and from the proper proportion of obligation on account of such bond.

Jurisdiction is hereby given to such courts to hear and determine the matters hereinbefore specified; and it shall be the duty of such courts to advance such causes upon the docket; and such causes shall be heard as in equity; and the decision of the court shall be final, and all the proceedings shall be in a summary manner.

If the petitioner shall fail to establish to the satisfaction of the court the facts herein named, upon which the importer is to be relieved from the proportion of duties hereinbefore mentioned, then the court shall render a judgment against the said petitioner and the sureties on his bond for the amount of the duties to which said goods are liable under the provisions of this act, together with a penalty of 10 per cent. upon the full amount of the same, and the costs to be taxed as in other causes.

It was decided in the negative, { Yeas 27
Nays 33

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. Plumb to amend the bill by adding thereto the following:

SEC.—. *That a commission is hereby created and established, to be known as the customs commission, to be composed of five disinterested persons to be appointed by the President, by and with the advice and consent of the Senate. The commissioners appointed under this act shall continue in office six years, respectively, from the date of their respective appointments, and until their successors respectively are appointed and qualified by the President, for the terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. No more than three of the commissioners shall be appointed from the same political party. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The salary of such commissioners shall be at the rate of $7,000 per annum. They shall be entitled, in addition, to compensation for actual traveling and other necessary expenses in the discharge of their duties. They shall choose one of their number to be president of the commission. They shall have power to employ a clerk, a stenographer, and a messenger, and, with the approval of the Secretary of the Treasury, such other clerical assistants as shall be necessary to the performance of their duties, and at such rates of compensation as they may establish, with the approval of the Secretary of the Treasury. Their salaries, expenses, and the compensation of the clerk, stenographer, messenger, and such additional clerical force as may thus be employed shall be paid out of any money in the Treasury not otherwise appropriated, upon the auditing of the same, according to the usual course in the Treasury Department.*

SEC.—. *That the commission shall establish its permanent office at the city of Washington, where it shall be at all times, in the usual course of business, ready to hear or receive oral or written testimony upon all the specific subjects mentioned in this act, and generally upon everything relating directly or indirectly to customs duties and revenue.*

SEC. —. *That it shall be the duty of the said commission to examine into and ascertain the average price of commodities imported into the United States both at wholesale and retail in the United States, and both in the foreign places of production, sale, or shipment, for the period of twelve months preceding and twelve months following any change in the rate of customs duties imposed upon such commodities, and this inquiry shall be carried back for a period of twenty-five years, and more, if deemed advisable by such commission, and shall extend to all facts relating to demand and supply, domestic and foreign, which tend to influence prices of such commodities, foreign and domestic, and to aid in determining the true effect of the import duty or of the change therein, in the several cases, upon domestic and foreign prices and upon productions of the same or of other commodities, upon revenue, upon immigration, upon profits of capital, rates of wages, and the general welfare.*

Second. To ascertain the amounts in quantity and value of the importation of the principal commodities during each of said periods of twelve months preceding and succeeding any such change in customs duties.

Third. To ascertain, as far as practicable, the quantity and value of the same or similar commodities produced in the United States during the same respective periods.

Fourth. To ascertain whether any or in what instances the particular rates of customs duties have operated to increase or diminish production in the United States and to cause a reduction of the first cost of articles produced for consumption, and what other causes, if any, have operated similarly.

Fifth. To ascertain in what particulars rates of customs duties existing from time to time operate injuriously or favorably to the development and increase of American manufactures and productions, or operate injuriously or favorably to the consumers of such manufactured articles and productions in respect of causing or contributing to the payment of unreasonable prices by consumers, or the removal or reduction of the same.

Sixth. To ascertain the effect of the customs duties upon the price of agricultural productions of the country and their sale in the United States markets and their consumption in the United States.

Seventh. To ascertain the effect of such customss duties, both actual and relative, in respect of the employment and the payment of remunerative wages, both actual and relative, to labor in the United States, and a comparison of the same with the labor and wages in other countries.

Eighth. To consider the effect of customs duties, or the absence of them, upon the agricultural, commercial, manufacturing, mining, and other industrial interests of the people of the United States.

Ninth. To ascertain and compare the actual cost and the selling price, both at wholesale and retail, of similar manufactured commodities, reduced to American weights, measures, and money, in the United States and elsewhere.

Tenth. To ascertain the growth and development of the principal manufacturing industries affected by the tariff schedules in England, France, Germany, Belgium, and the United States for the last twenty-five years, and to ascertain the relative cost of transportation in those countries and the United States.

SEC. —. *That for the purpose of such inquiries and investigations the commission may visit any part of the United States, and by public notice or otherwise invite testimony and information from all persons interested. They may from time to time also delegate one of their number to visit foreign countries to make investigation respecting the labor and industries of those countries whenever such investigation may be necessary to promote the objects of the commission, and they may require information concerning the labor and industries of foreign countries from consular or other agents of the United States in those countries, and such agents shall furnish the information so required promptly and without charge.*

SEC. —. *That the commission shall report its proceedings in respect of the matters hereinbefore in this act mentioned, together with the statistics and evidence upon which its report is based, together with recommendations for changes in customs dues which they may deem advisable and necessary, and the ground upon which its conclusions concerning such changes have been reached, to Congress, in the month of December in each year. It shall cause the testimony and statistics taken and obtained in respect of the matters in this act mentioned to be printed from time to time and distributed to members of Congress by the Public Printer, and also shall cause to be printed for the use of Congress 2,000 copies of its annual report, together with statistics and testimony hereinbefore mentioned. It is hereby made the duty of the Public Printer to execute the printing provided for in this act.*

It was determined in the affirmative, { Yeas ..... 31 / Nays 30

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present. (Pages 511–12.)

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was agreed to.

On motion by Mr. Daniel to amend the bill by inserting at the end of paragraph 227 the following:

And provided further, That the duty on leaf tobacco suitable for cigar wrappers shall not take effect until July 1, 1891.

It was determined in the negative.

No further amendment being proposed, the bill was reported to the Senate and the amendments were in part concurred in.

On the question to concur in the amendment made in Committee of the Whole, providing for the creation of a commission to be known as the customs commission,

It was determined in the affirmative, { Yeas ..... 31 / Nays 29

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was concurred in.

On the question to concur in the following amendment made in Committee of the Whole, viz: Strike out sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, relating to the internal-revenue tax on tobacco,

It was determined in the affirmative, { Yeas ..... 36 / Nays 25

On motion by Mr. Daniel,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was concurred in.

On the question to concur in the amendment made in Committee of the Whole, by inserting at the end of the schedules a new section relating to reciprocal trade with foreign countries,

It was determined in the affirmative, { Yeas ..... 38 / Nays 29

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was concurred in.

On the question to concur in the following amendment made in the Committee of the Whole, viz: On page 130, paragraph 703, line 2, strike out the word "sixteen" and insert the word *thirteen*,

It was determined in the affirmative, { Yeas ..... 39 / Nays 24

On motion by Mr. Vest,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was concurred in.

On motion by Mr. Butler to amend the bill by inserting after line 16, on page 120, the words: *Bagging made of jute, manilla, sisal, or other fiber except hemp or flax for wrapping cotton bales,*

It was determined in the negative, { Yeas ..... 27 / Nays 29

On motion by Mr. Butler,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On motion by Mr. Plumb to amend the bill by inserting after section 3 the following as a new section:

That whenever goods or other articles dutiable under the provisions of this act pay both a specific and ad valorem duty, which, combined, amount to over 100 per cent. of the foreign value of such goods or other articles, then the duty assessed and paid thereon shall be at the rate of 100 per cent. ad valorem instead of the combined rate prescribed.

It was determined in the negative { Yeas ..... 26 / Nays 33

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was not agreed to.

On the question to concur in the following amendment made in the Committee of the Whole, viz: On page 95 strike out paragraph 409, as follows:

409. There shall be paid from any moneys in the Treasury not otherwise appropriated, under the provisions of section three thousand six hundred and eighty-nine of the Revised Statutes, for a period of ten years from and after the date on which this act takes effect, the sum of one dollar for each and every pound of silk as reeled from

the cocoon, but not doubled, twisted, or advanced in manufacture in any other way: Provided, That such silk has been reeled in the United States from cocoons produced in the United States, and is equal in quality to a standard to be established by the Secretary of Agriculture. Also, the sum of seven cents for each and every pound of fresh cocoons produced in the United States by silk worms of the species scientifically known as Bombyx mori. And the Secretary of Agriculture is authorized from time to time to prescribe regulations for determining the amount of the silk in a lot on which a bounty is payable, and the manner in which it shall be paid; also, rules regulating the payment of the bounty on cocoons; and the said rules shall be duly published. And for the payment of these bounties the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Secretary of Agriculture, by whom the bounties shall be disbursed.

It was determined in the affirmative, { Yeas ..... 52 / Nays 5

On motion by Mr. Plumb,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So the amendment was concurred in.

No further amendment being proposed,

On the question: Shall the amendments be engrossed and the bill read a third time,

It was determined in the affirmative, { Yeas ..... 38 / Nays 28

(Page 513.)

On motion by Mr. Aldrich,

The yeas and nays being desired by one-fifth of the Senators present,

[Here follow lists of those voting affirmatively and those voting negatively.]

So it was

Ordered, That the amendments be engrossed and the bill read a third time.

The said bill, as amended, was read the third time.

When,

On motion by Mr. Aldrich,

Ordered, That the bill, as amended, be reprinted, with the amendments numbered. (Page 514.)

WEDNESDAY, *September* 10, 1890.

* * * * * * *

On motion by Mr. Aldrich,

The Senate resumed the consideration of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

The question being, Shall the bill pass?

It was determined in the affirmative, { Yeas ..... 40 / Nays 29

On motion by Mr. Aldrich,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative are,

Messrs. Aldrich, Allen, Allison, Blair, Cameron, Casey, Chandler, Cullom, Davis, Dawes, Dixon, Evarts, Frye, Hawley, Higgins, Hiscock, Hoar, Ingalls, Jones of Nevada, McMillan, Manderson, Mitchell, Moody, Paddock, Pierce, Platt, Plumb, Power, Quay, Sanders, Sawyer, Sherman, Spooner, Squire Stewart, Stockbridge, Teller, Washburn, Wilson of Iowa, Wolcott.

Those who voted in the negative are,

Messrs. Barbour, Bate, Berry, Blackburn, Blodgett, Butler, Carlisle, Cockrell, Coke, Colquitt, Daniel, Faulkner, Gorman, Gray, Harris, Hearst, Jones of Arkansas, Kenna, Morgan, Pasco, Pugh, Ransom, Reagan, Turpie, Vance, Vest, Voorhees, Walthall, Wilson of Maryland.

So it was

Resolved, That the bill pass; and,

On motion by Mr. Aldrich,

Resolved further, That the Senate request a conference with the House of Representatives on the bill and the amendments, and that the conferees on the part of the Senate, to consist of seven Senators, be appointed by the President *pro tempore;* and

The President *pro tempore* appointed Mr. Aldrich, Mr. Sherman, Mr. Allison, Mr. Hiscock, Mr. McPherson, Mr. Vance, and Mr. Carlisle.

Ordered, That the Secretary notify the House of Representatives thereof.

On motion by Mr. Plumb, at 5 o'clock and 32 minutes p. m.,

The Senate adjourned until 12 o'clock m. to-morrow. (Page 515.)

FRIDAY, *September* 12, 1890.

* * * * * * *

REVENUE BILL.

On motion by Mr. Gorman,

Mr. McPherson was excused from service as a manager at the conference on the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, and the amendments of the Senate thereto.

Ordered, That the vacancy be filled by the President *pro tempore*; and

The President *pro tempore* appointed Mr. Voorhees.

Ordered, That the Secretary notify the House of Representatives thereof. * * * (Page 516.)

WEDNESDAY, *September* 17, 1890.

* * * * * * *

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The House of Representatives has disagreed to the amendments of the Senate to the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; it has agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and has appointed Mr. McKinley, Mr. Burrows, Mr. Bayne, Mr. Dingley, Mr. Mills, Mr. McMillin, and Mr. Flower managers at the same on its part. (Page 524.)

* * * * * * *

TUESDAY, *September* 23, 1890.

* * * * * * *

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The Speaker of the House of Representatives has appointed Mr. Turner, of Georgia, a member of the committee of conference on the part of the House on the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes, in place of Mr. Mills, excused. (Page 539.)

MONDAY, *September* 29, 1890.

* * * * * * *

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The House of Representatives has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9416) to reduce the revenue and equalize the duties on imports, and for other purposes. (Page 555.)

* * * * * * *

CONFERENCE REPORT ON REVENUE BILL.

Mr. Aldrich, from the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9416) to reduce the revenue and equalize duties on imports and for other purposes, submitted the following report:

[Here follows conference report given in full in abstract from House Journal—see page 16.]

TUESDAY, *September* 30, 1890.

* * * * * * *

TARIFF COMPILATION.

Mr. Aldrich submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Ordered, That the Committee on Finance have authority to collate, index, and print such testimony as may be on file with the committee in connection with the bill H. R. 9416, together with any other data relative to tariff matters they may deem valuable, the expense therefor to be paid from the contingent fund of the Senate. (Page 569.

* * * * * * *

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: * * * The House of Representatives has passed the following resolution, in which it requests the concurrence of the Senate:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House be, and he is hereby, directed to number consecutively the paragraphs and

sections of House bill 9416, to reduce the revenue and equalize duties on imports, and for other purposes, in the enrollment of the bill. (Page 570.)

* * * * * * *

CONFERENCE REPORT ON REVENUE BILL.

The Senate resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and,

After debate,

On the question to agree thereto,

It was determined in the affirmative, { Yeas ..... 33 / Nays 27

On motion by Mr. Gorman,

The yeas and nays being desired by one-fifth of the Senators present.

[Here follow lists of those who voted in the affirmative and those who voted in the negative.]

So it was

Resolved, That the Senate agree to the report.

Ordered, That the Secretary notify the House of Representatives thereof.

* * * * * * *

ENROLLMENT OF REVENUE BILL.

The Vice-President laid before the Senate the following resolution this day received from the House of Representatives for concurrence:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House be, and he is hereby, directed to number consecutively the paragraphs and sections of House bill 9416, to reduce the revenue and equalize duties on imports, and for other purposes, in the enrollment of the bill.

The Senate proceeded, by unanimous consent, to consider the resolution; and having been amended on the motion of Mr. Aldrich by adding thereto the following:

And he is further directed to enroll paragraphs 362 and 372 as follows:

"362. *Cables, cordage, and twine (except binding-twine), composed in whole or in part of istle or Tampico fiber, manilla, sisal grass, or sunn, 1½ cents per pound; all binding-twine manufactured in whole or in part of istle or Tampico fiber, manilla, sisal grass, or sunn, seven tenths of 1 cent per pound; cables and cordage made of hemp, 2½ cents per pound; tarred cables and cordage, 3 cents per pound.*

"372. *Collars and cuffs, composed entirely of cotton, 15 cents per dozen pieces and 35 per cent. ad valorem; composed in whole or in part of linen, 30 cents per dozen pieces and 40 per cent. ad valorem; shirts and all articles of wearing apparel of every description, not specially provided for in this act, composed wholly or in part of linen, 55 per cent. ad valorem.*"

The resolution as amended was agreed to.

Ordered, That the Secretary request the concurrence of the House of Representatives in the amendment. (Page 572.)

WEDNESDAY, *October* 1, 1890.

* * * * * * *

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

* * * * * * *

The House of Representatives has passed the following resolution, in which it requests the concurrence of the Senate:

Resolved by the House of Representatives (the Senate concurring), That the Clerk of the House be, and he is hereby, directed, in the enrollment of House bill 9416 to reduce the revenue and equalize duties on imports, and for other purposes, to change paragraph 318 of the bill as follows: Insert a parenthesis after the word "confectionery," and strike out the parenthesis after the word "chocolate" where it last occurs in the paragraph, so as to include in parenthesis only the words "other than chocolate confectionery."

The resolution to correct the enrollment of the bill H. R. 9416, last received from the House of Representatives for concurrence, was read.

Ordered, That it lie on the table.

* * * * * * *

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The House of Representatives has agreed to the amendment of the Senate to the resolution of the House providing for the numbering of sections and paragraphs consecutively in the enrollment of the bill (H. R. 9416) to reduce the revenue and equalize duties on imports, and for other purposes; and

* * * * * * *

The Speaker of the House of Representatives having signed sixty-six enrolled bills, * * * H. R. 9416, * * * I am directed to bring them to the Senate for the signature of its President.

Mr. Dixon reported from the committee that they had examined and found duly enrolled the following bills and joint resolutions: * * * (Page 575.)

H. R. 9416. An act to reduce the revenue and equalize duties on imports, and for other purposes. (Page 576.)

* * * * * * *

PRESIDENTIAL APPROVALS.

A message from the House of Representatives, by Mr. McPherson, its Clerk:

Mr. President: The President of the United States has informed the House of Representatives that he has approved and signed the following acts and joint resolutions:

* * * * * * *

H. R. 9416. An act to reduce the revenue and equalize duties on imports, and for other purposes. * * * (Pages 578–9–80.)

C.

CERTIFIED COPY OF "THE McKINLEY ACT," AS ENROLLED AND DEPOSITED IN THE OFFICE OF THE SECRETARY OF STATE.

1206.

UNITED STATES OF AMERICA.

DEPARTMENT [Cut] OF STATE.

To all to whom these presents shall come, greeting:

I certify that hereto annexed is a true copy of an Act of Congress, approved October 1st, 1890, the original of which is on file in this Department, entitled: "An Act to reduce the revenue and equalize duties on imports, and for other purposes."

In testimony whereof, I, William F. Wharton, Acting Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this Tenth day of September; A. D. 1891, and of the Independence of the United States of America the one hundred and sixteenth.

[Seal of Department of State, United States of America.]

WILLIAM F. WHARTON.

H. R. 9416.

DEPARTMENT OF STATE,
October 1, 1890.
Received.

FIFTY-FIRST

Congress of the United States, at the first session, begun and held at the city of Washington, in the District of Columbia, on Monday, the second day of December, eighteen hundred and eighty-nine.

[PUBLIC—No. 339.]

AN ACT to reduce the revenue and equalize duties on imports, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the sixth day of October, eighteen hundred and ninety, unless otherwise specially provided for in this act, there shall be levied, collected, and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs, respectively prescribed, namely:

SCHEDULE A.—CHEMICALS, OILS AND PAINTS.

ACIDS.—

1. Acetic or pyroligneous acid, not exceeding the specific gravity of one and forty-seven one-thousandths, one and one-half cents per pound; exceeding the specific gravity of one and forty-seven one thousandths, four cents per pound.
2. Boracic acid, five cents per pound.
3. Chromic acid, six cents per pound.
4. Citric acid, ten cents per pound.
5. Sulphuric acid or oil of vitriol, not otherwise specially provided for, one-fourth of one cent per pound.
6. Tannic acid or tannin, seventy-five cents per pound.
7. Tartaric acid, ten cents per pound.
8. Alcoholic perfumery, including cologne-water and other toilet waters, two dollars per gallon and fifty per centum ad valorem; alcoholic compounds not specially provided for in this act, two dollars per gallon and twenty-five per centum ad valorem.
9. Alumina, alum, alum cake, patent alum, sulphate of alumina, and aluminous cake, and alum in crystals or ground, six-tenths of one cent per pound.
10. AMMONIA.—Carbonate of, one and three-fourths cents per pound; muriate of, or sal-ammoniac, three-fourths of one cent per pound; sulphate of, one-half of one cent per pound.
11. Blacking of all kinds, twenty-five per centum ad valorem.
12. Blue vitriol, or sulphate of copper, two cents per pound.
13. Bone-char, suitable for use in decolorizing sugars, twenty-five per centum ad valorem.
14. Borax, crude, or borate of soda, or borate of lime, three cents per pound; refined borax, five cents per pound.
15. Camphor, refined, four cents per pound.
16. Chalk, prepared, precipitated, French, and red, one cent per pound; all other chalk preparations not specially provided for in this act, twenty per centum ad valorem.
17. Chloroform, twenty-five cents per pound.

COAL-TAR PREPARATIONS.—

18. All coal-tar colors or dyes, by whatever name known, and not specially provided for in this act, thirty-five per centum ad valorem.
19. All preparations of coal-tar, not colors or dyes, not specially provided for in this act, twenty per centum ad valorem.
20. Cobalt, oxide of, thirty cents per pound.
21. Collodion and all compounds of pyroxyline, by whatever name known, fifty cents per pound; rolled or in sheets, but not made up into articles, sixty cents per pound; if in finished or partly-finished articles, sixty cents per pound and twenty-five per centum ad valorem.

22. Coloring for brandy, wine, beer, or other liquors, fifty per centum ad valorem.
23. Copperas or sulphate of iron, three-tenths of one cent per pound.
24. Drugs, such as barks, beans, berries, balsams, buds, bulbs, and bulbous roots, and excrescences, such as nut-galls, fruits, flowers, dried fibers, grains, gums, and gum resins, herbs, leaves, lichens, mosses, nuts, roots and stems, spices, vegetables, seeds (aromatic, not garden seeds), and seeds of morbid growth, weeds, woods used expressly for dyeing, and dried insects, any of the foregoing which are not edible, but which have been advanced in value or condition by refining or grinding, or by other process of manufacture, and not specially provided for in this act, ten per centum ad valorem.
25. Ethers sulphuric, forty cents per pound; spirits of nitrous ether, twenty-five cents per pound; fruit ethers, oils, or essences, two dollars and fifty cents per pound; ethers of all kinds not specially provided for in this act, one dollar per pound.
26. Extracts and decoctions of logwood and other dye-woods, extract of sumac, and extracts of barks, such as are commonly used for dyeing or tanning, not specially provided for in this act, seven-eighths of one cent per pound; extracts of hemlock bark one-half of one cent per pound.
27. Gelatine, glue, and isinglass or fish-glue, valued at not above seven cents per pound, one and one-half cents per pound; valued at above seven cents per pound and not above thirty cents per pound, twenty-five per centum ad valorem; valued at above thirty cents per pound, thirty per centum ad valorem.
28. Glycerine, crude, not purified, one and three-fourths cents per pound. Refined, four and one-half cents per pound.
29. Indigo, extracts, or pastes of, three-fourths of one cent per pound; carmined, ten cents per pound.
30. Ink and ink-powders, printers' ink, and all other ink not specially provided for in this act, thirty per centum ad valorem.
31. Iodine, resublimed, thirty cents per pound.
32. Iodoform, one dollar and fifty cents per pound.
33. Licorice, extracts of, in paste, rolls, or other forms, five and one-half cents per pound.
34. Magnesia, carbonate of, medicinal, four cents per pound; calcined, eight cents per pound; sulphate of, or Epsom salts, three-tenths of one cent per pound.
35. Morphia, or morphine, and all salts thereof, fifty cents per ounce.

OILS.—

36. Alizarine assistant, or soluble oil, or oleate of soda, or Turkey red oil, containing fifty per centum or more of castor oil, eighty cents per gallon; containing less than fifty per centum of castor oil, forty cents per gallon; all other, thirty per centum ad valorem.
37. Castor oil, eighty cents per gallon.
38. Cod-liver oil, fifteen cents per gallon.
39. Cotton-seed oil, ten cents per gallon of seven and one-half pounds weight.
40. Croton oil, thirty cents per pound.
41. Flaxseed or linseed and poppy-seed oil, raw, boiled, or oxidized, thirty-two cents per gallon of seven and one-half pounds weight.
42. Fusel oil, or amylic alcohol, ten per centum ad valorem.
43. Hemp-seed oil and rape-seed oil, ten cents per gallon.
44. Olive oil, fit for salad purposes, thirty-five cents per gallon.
45. Peppermint oil, eighty cents per pound.
46. Seal, herring, whale, and other fish oil not specially provided for in this act, eight cents per gallon.
47. Opium, aqueous extract of, for medicinal uses, and tincture of, as laudanum, and all other liquid preparations of opium, not specially provided for in this act, fifty per centum ad valorem.
48. Opium containing less than nine per centum of morphia, and opium prepared or smoking, twelve dollars per pound; but opium prepared for smoking and other preparations of opium deposited in bonded-warehouse shall not be removed therefrom without payment of duties, and such duties shall not be refunded.

PAINTS, COLORS, AND VARNISHES.—

49. Baryta, sulphate of, or barytes, including barytes earth, unmanufactured, one dollar and twelve cents per ton; manufactured, six dollars and seventy-two cents per ton.
50. Blues, such as Berlin, Prussian, Chinese, and all others, containing ferrocyanide of iron, dry or ground in or mixed with oil, six cents per pound; in pulp or mixed with water six cents per pound on the material contained therein when dry.
51. Blanc-fixe, or satin white or artificial sulphate of barytes, three-fourths of one cent per pound.
52. Black, made from bone, ivory, or vegetable, under whatever name known, including bone-black and lamp-black, dry or ground in oil or water, twenty-five per centum ad valorem.

53. Chrome yellow, chrome green, and all other chromium colors in which lead and bichromate of potash or soda are component parts, dry, or ground in or mixed with oil, four and one-half cents per pound; in pulp or mixed with water, four and one-half cents per pound on the material contained therein when dry.
54. Ocher and ochery earths, sienna and sienna earths, umber and umber earths not specially provided for in this act, dry, one-fourth of one cent per pound; ground in oil, one and one-half cents per pound.
55. Ultramarine blue, four and one-half cents per pound.
56. Varnishes, including so-called gold size or japan, thirty-five per centum ad valorem; and on spirit varnishes for the alcohol contained therein, one dollar and thirty-two cents per gallon additional.
57. Vermilion red, and colors containing quicksilver, dry or ground in oil or water, twelve cents per pound.
58. Wash blue, containing ultramarine, three cents per pound.
59. Whiting and Paris white, dry, one-half of one cent per pound; ground in oil, or putty, one cent per pound.
60. Zinc, oxide of, and white paint containing zinc, but not containing lead; dry, one and one-fourth cents per pound; ground in oil, one and three-fourths cents per pound.
61. All other paints and colors, whether dry or mixed, or ground in water or oil, including lakes, crayons, smalts, and frostings, not specially provided for in this act, and artists' colors of all kinds, in tubes or otherwise, twenty-five per centum ad valorem; all paints and colors, mixed or ground with water or solutions other than oil, and commercially known as artists' water color paints, thirty per centum ad valorem.

LEAD PRODUCTS.—

62. Acetate of lead, white, five and one-half cents per pound; brown, three and one-half cents per pound.
63. Litharge, three cents per pound.
64. Nitrate of lead, three cents per pound.
65. Orange mineral, three and one-half cents per pound.
66. Red lead, three cents per pound.
67. White lead, and white paint containing lead, dry or in pulp, or ground or mixed with oil, three cents per pound.
68. Phosphorus, twenty cents per pound.

POTASH.—

69. Bichromate and chromate of, three cents per pound.
70. Caustic or hydrate of, refined in sticks or rolls, one cent per pound.
71. Hydriodate, iodide, and iodate of, fifty cents per pound.
72. Nitrate of, or saltpeter, refined, one cent per pound.
73. Prussiate of, red, ten cents per pound; yellow, five cents per pound.

PREPARATIONS.—

74. All medicinal preparations, including medicinal proprietary preparations, of which alcohol is a component part, or in the preparation of which alcohol is used, not specially provided for in this act, fifty cents per pound.
75. All medicinal preparations, including medicinal proprietary preparations, of which alcohol is not a component part, and not specially provided for in this act, twenty-five per centum ad valorem; calomel and other mercurial medicinal preparations, thirty-five per centum ad valorem.
76. Products or preparations known as alkalies, alkaloids, distilled oils, essential oils, expressed oils, rendered oils, and all combinations of the foregoing, and all chemical compounds and salts, not specially provided for in this act, twenty-five per centum ad valorem.
77. Preparations used as applications to the hair, mouth, teeth, or skin, such as cosmetics, dentifrices, pastes, pomades, powders, and tonics, including all known as toilet preparations, not specially provided for in this act, fifty per centum ad valorem.
78. Santonine, and all salts thereof containing eighty per centum or over of santonine, two dollars and fifty cents per pound.
79. Soap: Castile-soap, one and one-fourth cents per pound; fancy, perfumed, and all descriptions of toilet-soap, fifteen cents per pound; all other soaps, not specially provided for in this act, twenty per centum ad valorem.

SODA.—

80. Bicarbonate of soda or supercarbonate of soda or saleratus, one cent per pound.
81. Hydrate of, or caustic soda, one cent per pound.
82. Bichromate and chromate of, three cents per pound.
83. Sal-soda, or soda-crystals, and soda-ash, one fourth of one cent per pound.
84. Silicate of soda, or other alkaline silicate, one-half of one cent per pound.

85. Sulphate of soda, or salt-cake or niter-cake, one dollar and twenty-five cents per ton.
86. Sponges, twenty per centum ad valorem.
87. Strychnia, or strychnine, and all salts thereof, forty cents per ounce.
88. Sulphur, refined, eight dollars per ton; sublimed, or flowers of, ten dollars per ton.
89. Sumac, ground, four-tenths of one cent per pound.
90. Tartar, cream of, and patent tartar, six cents per pound.
91. Tartars and lees crystals, partly refined, four cents per pound.
92. Tartrate of soda and potassa, or Rochelle salts, three cents per pound.

SCHEDULE B.—EARTHS, EARTHENWARE, AND GLASSWARE.

BRICK AND TILE—

93. Fire-brick, not glazed, enameled, ornamented, or decorated in any manner, one dollar and twenty-five cents per ton; glazed, enameled, ornamented, or decorated, forty-five per centum ad valorem.
94. Tiles and brick, other than fire-brick, not glazed, ornamented, painted, enameled, vitrified, or decorated, twenty-five per centum ad valorem; ornamented, glazed, painted, enameled, vitrified, or decorated, and all encaustic, forty-five per centum ad valorem.

CEMENT, LIME, AND PLASTER—

95. Roman, Portland, and other hydraulic cement, in barrels, sacks, or other packages, eight cents per one hundred pounds, including weight of barrel or package; in bulk, seven cents per one hundred pounds; other cement, twenty per centum ad valorem.
96. Lime, six cents per one hundred pounds, including weight of barrel or package.
97. Plaster of Paris, or gypsum, ground, one dollar per ton; calcined, one dollar and seventy-five cents per ton.

CLAYS OR EARTHS—

98. Clays or earths, unwrought or unmanufactured, not specially provided for in this act, one dollar and fifty cents per ton; wrought or manufactured, not specially provided for in this act, three dollars per ton; china clay, or kaolin, three dollars per ton.

EARTHENWARE AND CHINA—

99. Common brown earthenware, common stoneware, and crucibles, not ornamented or decorated in any manner, twenty-five per centum ad valorem.
100. China, porcelain, parian, bisque, earthen, stone and crockery ware, including plaques, ornaments, toys, charms, vases, and statuettes, painted, tinted, stained, enameled, printed, gilded, or otherwise decorated or ornamented in any manner, sixty per centum ad valorem; if plain white, and not ornamented or decorated in any manner, fifty-five per centum ad valorem.
101. All other china, porcelain, parian, bisque, earthen, stone, and crockery ware, and manufactures of the same, by whatsoever designation or name known in the trade, including lava tips for burners, not specially provided for in this act, if ornamented or decorated in any manner, sixty per centum ad valorem; if not ornamented or decorated, fifty-five per centum ad valorem.
102. Gas-retorts, three dollars each.

GLASS AND GLASSWARE—

103. Green, and colored, molded or pressed, and flint, and lime glass bottles, holding more than one pint, and demijohns, and carboys (covered or uncovered), and other molded or pressed green and colored and flint or lime bottle glassware, not specially provided for in this act, one cent per pound. Green, and colored, molded or pressed, and flint, and lime glass bottles, and vials holding not more than one pint and not less than one-quarter of a pint, one and one-half cents per pound; if holding less than one-fourth of a pint, fifty cents per gross.
104. All articles enumerated in the preceding paragraph, if filled, and not otherwise provided for in this act, and the contents are subject to an ad valorem rate of duty, or to a rate of duty based upon the value, the value of such bottles, vials, or other vessels shall be added to the value of the contents for the ascertainment of the dutiable value of the latter; but if filled, and not otherwise provided for in this act, and the contents are not subject to an ad valorem rate of duty, or to rate of duty based on the value, or are free of duty, such bottles, vials, or other vessels shall pay, in addition to the duty, if any, on their contents, the rates of duty prescribed in the preceding paragraph: *Provided*, That no article manufactured from glass described in the preceding paragraph shall pay a less rate of duty than forty per centum ad valorem.

105. Flint and lime, pressed glassware, not cut, engraved, painted, etched, decorated, colored, printed, stained, silvered, or gilded, sixty per centum ad valorem

106. All articles of glass, cut, engraved, painted, colored, printed, stained, decorated, silvered, or gilded, not including plate glass silvered, or looking-glass plates, sixty per centum ad valorem.

107. Chemical glassware for use in laboratory, and not otherwise specially provided for in this act, forty-five per centum ad valorem.

108. Thin blown glass, blown with or without a mold, including glass chimneys and all other manufactures of glass, or of which glass shall be the component material of chief value, not specially provided for in this act, sixty per centum ad valorem.

109. Heavy blown glass, blown with or without a mold, not cut or decorated, finished or unfinished, sixty per centum ad valorem.

110. Porcelain or opal glassware, sixty per centum ad valorem.

111. All cut, engraved, painted, or otherwise ornamented or decorated glass bottles, decanters, or other vessels of glass shall, if filled, pay duty in addition to any duty chargeable on the contents, as if not filled, unless otherwise specially provided for in this act.

112. Unpolished cylinder, crown, and common window-glass, not exceeding ten by fifteen inches square, one and three-eighths cents per pound; above that, and not exceeding sixteen by twenty-four inches square, one and seven-eighths cents per pound; above that, and not exceeding twenty-four by thirty inches square, two and three-eighths cents per pound; above that, and not exceeding twenty-four by thirty-six inches square, two and seven-eighths cents per pound; all above that, three and one-eighth cents per pound: *Provided*, That unpolished cylinder, crown, and common window glass, imported in boxes, shall contain fifty square feet, as nearly as sizes will permit, and the duty shall be computed thereon according to the actual weight of glass.

113. Cylinder and crown-glass polished, not exceeding sixteen by twenty-four inches square, four cents per square foot; above that, and not exceeding twenty-four by thirty inches square, six cents per square foot; above that, and not exceeding twenty-four by sixty inches square, twenty cents per square foot; above that, forty cents per square foot.

114. Fluted, rolled, or rough plate-glass, not including crown, cylinder, or common window-glass, not exceeding ten by fifteen inches square, three-fourths of one cent per square foot; above that, and not exceeding sixteen by twenty-four inches square, one cent per square foot; above that, and not exceeding twenty-four by thirty inches square, one and one-half cents per square foot; all above that, two cents per square foot; and all fluted, rolled, or rough plate glass, weighing over one hundred pounds per one hundred square feet, shall pay an additional duty on the excess at the same rates herein imposed; *Provided*, That all of the above plate-glass when ground, smoothed or otherwise obscured shall be subject to the same rate of duty as cast polished plate-glass unsilvered.

115. Cast polished plate-glass, finished or unfinished and unsilvered, not exceeding sixteen by twenty-four inches square, five cents per square foot; above that, and not exceeding twenty-four by thirty inches square, eight cents per square foot; above that, and not exceeding twenty-four by sixty inches square, twenty-five cents per square foot; all above that, fifty cents per square foot.

116. Cast polished plate-glass, silvered, and looking-glass plates, not exceeding sixteen by twenty-four inches square, six cents per square foot; above that, and not exceeding twenty-four by thirty inches square, ten cents per square foot; above that, and not exceeding twenty-four by sixty inches square, thirty-five cents per square foot; all above that, sixty cents per square foot.

117. But no looking-glass plates, or plate-glass silvered, when framed, shall pay a less rate of duty than that imposed upon similar glass of like description not framed, but shall pay in addition thereto upon such frames the rate of duty applicable thereto when imported separate.

118. Cast polished plate-glass, silvered or unsilvered, and cylinder, crown, or common window-glass, when ground, obscured, frosted, sanded, enameled, beveled, etched, embossed, engraved, stained, colored, or otherwise ornamented or decorated, shall be subject to a duty of ten per centum ad valorem in addition to the rates otherwise chargeable thereon.

119. Spectacles and eyeglasses, or spectacles and eyeglass-frames, sixty per centum ad valorem.

120. On lenses costing one dollar and fifty cents per gross pairs, or less, sixty per centum ad valorem.

121. Spectacle and eyeglass lenses with their edges ground or beveled to fit frames, sixty per centum ad valorem.

122. All stained or painted window-glass and stained or painted glass windows, and hand, pocket, or table mirrors not exceeding in size one hundred and forty-four square inches, with or without frames or cases, of whatever material composed, lenses of glass or pebble, wholly or partly manufactured, and not specially provided for in this act, and fusible enamel, forty-five per centum ad valorem.

MARBLE AND STONE, AND MANUFACTURES OF—

123. Marble of all kinds in block, rough or squared, sixty-five cents per cubic foot.

124. Veined marble, sawed, dressed, or otherwise, including marble slabs and marble paving tiles, one dollar and ten cents per cubic foot (but in measurement no slab shall be computed at less than one inch in thickness).

125. Manufactures of marble not specially provided for inthisact, fifty per centum ad valorem.

STONE—

126. Burr-stones manufactured or bound up into mill-stones, fifteen per centum ad valorem.

127. Freestone, granite, sandstone, limestone, and other building or monumental stone, except marble, unmanufactured or undressed, not specially provided for in this act, eleven cents per cubic foot.

128. Freestone, granite, sandstone, limestone, and other building or monumental stone, except marble, not specially provided for in this act, hewn, dressed, or polished, forty per centum ad valorem.

129. Grindstones, finished or unfinished, one dollar and seventy-five cents per ton.

SLATE—

130. Slates, slate chimney-pieces, mantels, slabs for tables, and all other manufactures of slate, not specially provided for in this act, thirty per centum ad valorem.

131. Roofing slates, twenty-five per centum ad valorem.

SCHEDULE C.—METALS AND MANUFACTURES OF.

IRON AND STEEL.

132. Chromate of iron, or chromic ore, fifteen per centum ad valorem.

133. Iron ore, including manganiferous iron ore, also the dross or residuum from burnt pyrites, seventy-five cents per ton. Sulphur ore, as pyrites, or sulphuret of iron in its natural state, containing not more than three and one-half per centum copper, seventy-five cents per ton: *Provided*, That ore containing more than two per centum of copper shall pay, in addition thereto, one-half of one cent per pound for the copper contained therein: *Provided, also*, That sulphur ore as pyrites or sulphuret of iron in its natural state, containing in excess of twenty-five per centum of sulphur, shall be free of duty, except on the copper contained therein, as above provided: *And provided further*, That in levying and collecting the duty on iron ore no deduction shall be made from the weight of the ore on account of moisture which may be chemically or physically combined therewith.

134. Iron in pigs, iron kentledge, spiegeleisen, ferro-manganese, ferro-silicon, wrought and cast scrap iron, and scrap steel, three-tenths of one cent per pound; but nothing shall be deemed scrap iron or scrap steel except waste or refuse iron or steel fit only to be remanufactured.

135. Bar-iron, rolled or hammered, comprising flats not less than one inch wide, nor less than three-eighths of one inch thick, eight-tenths of one cent per pound; round iron not less than three-fourths of one inch in diameter, and square iron not less than three-fourths of one inch square, nine-tenths of one cent per pound; flats less than one inch wide, or less than three-eighths of one inch thick; round iron less than three-fourths of one inch and not less than seven-sixteenths of one inch in diameter; and square iron less than three-fourths of one inch square, one cent per pound.

136. Round iron, in coils or rods, less than seven-sixteenths of one inch in diameter, and bars or shapes of rolled iron, not specially provided for in this act, one and one-tenth cents per pound: *Provided*, That all iron in slabs, blooms, loops, or other forms less finished than iron in bars, and more advanced than pig-iron, except castings, shall be rated as iron in bars, and be subject to a duty of eight-tenths of one cent per pound; and none of the iron above enumerated in this paragraph shall pay a less rate of duty than thirty-five per centum ad valorem: *Provided further*, That all iron bars, blooms, billets, or sizes or shapes of any kind, in the manufacture of which charcoal is used as fuel, shall be subject to a duty of not less than twenty-two dollars per ton.

137. Beams, girders, joists, angles, channels, car-truck channels, T T, columns and posts or parts or sections of columns and posts, deck and bulb beams, and building forms, together with all other structural shapes of iron or steel, whether plain or punched, or fitted for use, nine-tenths of one cent per pound.

138. Boiler or other plate iron or steel, except saw-plates hereinafter provided for, not thinner than number ten wire gauge, sheared or unsheared, and skelp iron or steel sheared or rolled in grooves, valued at one cent per pound or less, five-tenths of one cent per pound; valued above one cent and not above one and four tenths cents per pound, sixty five hundredths of one cent per pound; valued above one and four tenths cents and not above two cents per pound, eight tenths of one cent per pound; valued above two cents and not above three cents per pound, one and one-tenth cents per pound; valued above three cents and not above four cents per pound, one and five-tenths cents per pound; valued above four cents and not above seven cents per pound, two cents per pound; valued above seven cents and not above ten cents per pound, two and eight-tenths cents per pound; valued above ten cents and not above thirteen cents per pound, three and one-half cents per pound; valued above thirteen cents per pound, forty-five per centum ad valorem: *Provided*, That all plate iron or steel thinner than number ten wire gauge shall pay duty as iron or steel sheets.

139. Forgings of iron or steel, or forged iron and steel combined, of whatever shape, or in whatever stage of manufacture, not specially provided for in this act, two and three-tenths cents per pound: *Provided*, That no forgings of iron or steel, or forgings of iron and steel combined, by whatever process made, shall pay a less rate of duty than forty-five per centum ad valorem.

140. Hoop, or band, or scroll, or other iron or steel, valued at three cents per pound or less, eight inches or less in width, and less than three-eighths of one inch thick and not thinner than number ten wire gauge, one cent per pound; thinner than number ten wire gauge and not thinner than number twenty wire gauge, one and one-tenth cents per pound; thinner than number twenty wire gauge, one and three-tenths cents per pound: *Provided*, That hoop or band iron, or hoop or band steel, cut to length, or wholly or partially manufactured into hoops or ties for baling purposes, barrel hoops of iron or steel, and hoop or band iron or hoop or band steel flared, splayed or punched, with or without buckles or fastenings, shall pay two-tenths of one cent per pound more duty than that imposed on the hoop or band iron or steel from which they are made.

141. Railway-bars made of iron or steel, and railway-bars made in part of steel, T-rails, and punched iron or steel flat rails, six-tenths of one cent per pound.

142. Sheets of iron or steel, common or black, including all iron or steel commercially known as common or black taggers iron or steel, and skelp iron or steel, valued at three cents per pound or less: Thinner than number ten and not thinner than number twenty wire gauge, one cent per pound; thinner than number twenty wire gauge, and not thinner than number twenty-five wire gauge, one and one-tenth cents per pound; thinner than number twenty-five wire gauge, one and four-tenths cents per pound; corrugated or crimped, one and four-tenths cents per pound: *Provided*, That all common or black sheet-iron or sheet-steel not thinner than number ten wire gauge shall pay duty as plate iron or plate steel.

143. All iron or steel sheets or plates, and all hoop, band, or scroll iron or steel, excepting what are known commercially as tin plates, terne plates, and taggers tin, and hereinafter provided for, when galvanized or coated with zinc or spelter, or other metals, or any alloy of those metals, shall pay three-fourths of one cent per pound more duty than the rates imposed by the preceding paragraph upon the corresponding gauges, or forms, of common or black sheet or taggers iron or steel; and on and after July first, eighteen hundred and ninety-one, all iron or steel sheets, or plates, or taggers iron coated with tin or lead or with a mixture of which these metals or either of them is a component part, by the dipping or any other process, and commercially known as tin plates, terne plates, and taggers tin, shall pay two and two-tenths cents per pound: *Provided*, That on and after July first, eighteen hundred and ninety-one, manufactures of which tin, tin plates, terne plates, taggers tin, or either of them, are component materials of chief value, and all articles, vessels or wares manufactured, stamped or drawn from sheet-iron or sheet-steel, such material being the component of chief value, and coated wholly or in part with tin or lead or a mixture of which these metals or either of them is a component part, shall pay a duty of fifty-five per centum ad valorem: *Provided further*, That on and after October first, eighteen hundred and ninety-seven, tin plates and terne plates lighter in weight than sixty-three pounds per hundred square feet shall be admitted free of duty, unless it shall be made to appear to the satisfaction of the President (who shall thereupon by proclamation make known the fact) that the aggregate quantity of such plates lighter than sixty-three pounds per hundred square feet produced in the United States during either of the six years next preceding June thirtieth, eighteen hundred and ninety-seven, has equaled one third the amount of such plates imported and entered for consumption during any fiscal year after the passage of this act, and

prior to said October first, eighteen hundred and ninety-seven: *Provided*, That the amount of such plates manufactured into articles exported, and upon which a drawback shall be paid, shall not be included in ascertaining the amount of such importations: *And provided further*, That the amount or weight of sheet iron or sheet steel manufactured in the United States and applied or wrought in the manufacture of articles or wares tinned or terne-plated in the United States, with weight allowance as sold to manufacturers or others, shall be considered as tin and terne plates produced in the United States within the meaning of this act.

144. Sheet-iron or sheet-steel, polished, planished, or glanced, by whatever name designated, two and one-half cents per pound: *Provided*, That plate or sheet or taggers iron or steel, by whatever name designated, other than the polished, planished, or glanced herein provided for, which has been pickled or cleaned by acid, or by any other material or process, or which is cold-rolled, smoothed only, not polished, shall pay one-quarter of one cent per pound more duty than the corresponding gauges of common or black sheet or taggers iron or steel.

145. Sheets or plates of iron or steel, or taggers iron or steel, coated with tin or lead, or with a mixture of which these metals, or either of them, is a component part, by the dipping or any other process, and commercially known as tin plates, terne plates, and taggers tin, one cent per pound until July first, eighteen hundred and ninety-one.

146. Steel ingots, cogged ingots, blooms, and slabs, by whatever process made; die blocks or blanks; billets and bars and tapered or beveled bars; steamer, crank, and other shafts; shafting; wrist or crank pins; connecting-rods and piston-rods; pressed, sheared, or stamped shapes; saw-plates, wholly or partially manufactured; hammer-molds or swaged-steel; gun-barrel molds not in bars; alloys used as substitutes for steel tools; all descriptions and shapes of dry sand, loam, or iron-molded steel castings; sheets and plates not specially provided for in this act; and steel in all forms and shapes not specially provided for in this act; all of the above valued at one cent per pound or less, four-tenths of one cent per pound; valued above one cent and not above one and four-tenths cents per pound, five-tenths of one cent per pound; valued above one and four-tenths cents and not above one and eight tenths cents per pound, eight-tenths of one cent per pound; valued above one and eight-tenths cents and not above two and two tenths cents per pound, nine-tenths of one cent per pound; valued above two and two-tenths cents, and not above three cents per pound, one and two tenths cents per pound; valued above three cents and not above four cents per pound, one and six-tenths cents per pound; valued above four cents and not above seven cents per pound, two cents per pound; valued above seven cents and not above ten cents per pound, two and eight-tenths cents per pound; valued above ten cents and not above thirteen cents per pound, three and one-half cents per pound; valued above thirteen cents and not above sixteen cents per pound, four and two-tenths cents per pound; valued above sixteen cents per pound, seven cents per pound.

WIRE—

147. Wire rods: Rivet, screw, fence, and other iron or steel wire rods, and nail rods, whether round, oval, flat, square, or in any other shape, in coils or otherwise, not smaller than number six wire gauge, valued at three and half cents or less per pound, six-tenths of one cent per pound; and iron or steel, flat, with longitudinal ribs for the manufacture of fencing, valued at three cents or less per pound, six-tenths of one cent per pound: *Provided*, That all iron or steel rods, whether rolled or drawn through dies, smaller than number six wire gauge, shall be classed and dutiable as wire.

148. Wire: Wire made of iron or steel, not smaller than number ten wire gauge, one and one-fourth cents per pound; smaller than number ten, and not smaller than number sixteen wire gauge, one and three-fourths cents per pound; smaller than number sixteen and not smaller than number twenty-six wire gauge, two and one-fourth cents per pound; smaller than number twenty-six wire gauge, three cents per pound: *Provided*, That iron or steel wire covered with cotton, silk, or other material, and wires or strip steel, commonly known as crinoline wire, corset-wire, and hat-wire, shall pay a duty of five cents per pound: *And provided further*, That flat steel wire, or sheet steel in strips, whether drawn through dies or rolls, untempered or tempered, of whatsoever width, twenty-five one thousandths of an inch thick or thinner (ready for use or otherwise), shall pay a duty of fifty per centum ad valorem: *And provided further*, That no article made from iron or steel wire, or of which iron or steel wire is a component part of chief value, shall pay a less rate of duty than the iron or steel wire from which it is made either wholly or in part: *And provided further*, That iron or steel wire cloths, and iron or steel wire nettings made in meshes of any form, shall pay a duty equal in amount to that imposed on iron or steel wire used in the manufacture of iron or steel wire cloth, or iron or steel wire nettings, and two cents per pound in addition thereto.

There shall be paid on iron or steel wire coated with zinc or tin, or any other metal (except fence-wire and iron or steel, flat, with longitudinal ribs, for the manufacture of fencing), one-half of one cent per pound in addition to the rate imposed on the wire of which it is made; on iron wire rope and wire strand, one cent per pound in addition to the rate imposed on the wire of which it is made; on steel wire rope and wire strand, two cents per pound in addition to the rate imposed on the wire of which they or either of them are made: *Provided further*, That all iron or steel wire valued at more than four cents per pound shall pay a duty of not less than forty-five per centum ad valorem, except that card-wire for the manufacture of card clothing shall pay a duty of thirty-five per centum ad valorem.

GENERAL PROVISIONS.

149. No allowance or reduction of duties for partial loss or damage in consequence of rust or of discoloration shall be made upon any description of iron or steel, or upon any article wholly or partly manufactured of iron or steel, or upon any manufacture of iron and steel.

150. All metal produced from iron or its ores, which is cast and malleable, of whatever description or form, without regard to the percentage of carbon contained therein, whether produced by cementation, or converted, cast, or made from iron or its ores, by the crucible, Bessemer, Clapp-Griffiths, pneumatic, Thomas-Gilchrist, basic, Siemens-Martin, or open-hearth process, or by the equivalent of either, or by a combination of two or more of the processes, or their equivalents, or by any fusion or other process which produces from iron or its ores a metal either granular or fibrous in structure, which is cast and malleable, excepting what is known as malleable-iron castings, shall be classed and denominated as steel.

151. No article not specially provided for in this act, wholly or partly manufactured from tin plate, terne plate, or the sheet, plate, hoop, band, or scroll iron or steel herein provided for, or of which such tin plate, terne plate, sheet, plate, hoop, band, or scroll iron or steel shall be the material of chief value, shall pay a lower rate of duty than that imposed on the tin plate, terne plate, or sheet, plate, hoop, band, or scroll iron or steel from which it is made, or of which it shall be the component thereof of chief value.

152. On all iron or steel bars or rods of whatever shape or section, which are cold rolled, cold hammered, or polished in any way in addition to the ordinary process of hot rolling or hammering, there shall be paid one-fourth of one cent per pound in addition to the rates provided in this act; and on all strips, plates, or sheets of iron or steel of whatever shape, other than the polished, planished, or glanced sheet-iron or sheet-steel hereinbefore provided for, which are cold rolled, cold hammered, blued, brightened, tempered, or polished by any process to such perfected surface finish, or polish better than the grade of cold rolled, smooth only, hereinbefore provided for, there shall be paid one and one-fourth cents per pound in addition to the rates provided in this act upon plates, strips, or sheets of iron or steel of common or black finish; and on steel circular saw plates there shall be paid one cent per pound in addition to the rate provided in this act for steel saw plates.

MANUFACTURES OF IRON AND STEEL.

153. Anchors, or parts thereof, of iron or steel, mill-irons and mill-cranks of wrought-iron, and wrought-iron for ships, and forgings of iron or steel, or of combined iron and steel, for vessels, steam-engines, and locomotives, or parts thereof, weighing each twenty-five pounds or more, one and eight-tenths cents per pound.

154. Axles, or parts thereof, axle-bars, axle-blanks, or forgings for axles, whether of iron or steel, without reference to the stage or state of manufacture, two cents per pound: *Provided*, That when iron or steel axles are imported fitted in wheels, or parts of wheels, of iron or steel, they shall be dutiable at the same rate as the wheels in which they are fitted.

155. Anvils of iron or steel, or of iron and steel combined, by whatever process made, or in whatever stage of manufacture, two and one-half cents per pound.

156. Blacksmiths' hammers and sledges, track tools, wedges, and crowbars, whether of iron or steel, two and one-fourth cents per pound.

157. Boiler or other tubes, pipes, flues, or stays of wrought-iron or steel, two and one-half cents per pound.

158. Bolts, with or without threads or nuts, or bolt-blanks, and finished hinges or hinge-blanks, whether of iron or steel, two and one-fourth cents per pound.

159. Card-clothing, manufactured from tempered steel wire, fifty cents per square foot; all other, twenty-five cents per square foot.

160. Cast-iron pipe of every description, nine-tenths of one cent per pound.

161. Cast-iron vessels, plates, stove-plates, andirons, sad-irons, tailors' irons, hatters' irons, and castings of iron, not specially provided for in this act, one and two-tenths cents per pound.

162. Castings of malleable iron not specially provided for in this act, one and three-fourths cents per pound.

163. Cast hollow-ware, coated, glazed, or tinned, three cents per pound.

164. Chain or chains of all kinds, made of iron or steel, not less than three-fourths of one inch in diameter, one and six-tenths cents per pound; less than three-fourths of one inch and not less than three-eighths of one inch in diameter, one and eight-tenths cents per pound; less than three-eighths of one inch in diameter, two and one-half cents per pound, but no chain or chains of any description shall pay a lower rate of duty than forty-five per centum ad valorem.

CUTLERY—

165. Pen-knives or pocket-knives of all kinds, or parts thereof, and erasers, or parts thereof, wholly or partly manufactured, valued at not more than fifty cents per dozen, twelve cents per dozen; valued at more than fifty cents per dozen and not exceeding one dollar and fifty cents per dozen, fifty cents per dozen; valued at more than one dollar and fifty cents per dozen and not exceeding three dollars per dozen, one dollar per dozen; valued at more than three dollars per dozen, two dollars per dozen; and in addition thereto on all the above, fifty per centum ad valorem. Razors and razor-blades, finished or unfinished, valued at less than four dollars per dozen, one dollar per dozen; valued at four dollars or more per dozen, one dollar and seventy-five cents per dozen; and in addition thereto on all the above razors and razor-blades, thirty per centum ad valorem.

166. Swords, sword blades, and side-arms, thirty-five per centum ad valorem.

167. Table-knives, forks, steels, and all butchers', hunting, kitchen, bread, butter, vegetable, fruit, cheese, plumbers', painters', palette, and artists' knives of all sizes, finished or unfinished, valued at not more than one dollar per dozen pieces ten cents per dozen; valued at more than one dollar and not more than two dollars, thirty-five cents per dozen; valued at more than two dollars and not more than three dollars, forty cents per dozen; valued at more than three dollars and not more than eight dollars, one dollar per dozen; valued at more than eight dollars, two dollars per dozen; and in addition upon all the above-named articles, thirty per centum ad valorem. All carving and cooks' knives and forks of all sizes, finished or unfinished, valued at not more than four dollars per dozen pieces, one dollar per dozen; valued at more than four dollars and not more than eight dollars, two dollars per dozen pieces; valued at more than eight dollars and not more than twelve dollars, three dollars per dozen pieces; valued at more than twelve dollars, five dollars, per dozen pieces; and in addition upon all the above-named articles, thirty per centum ad valorem.

168. Files, file-blanks, rasps, and floats, of all cuts and kinds, four inches in length and under, thirty-five cents per dozen; over four inches in length and under nine inches, seventy-five cents per dozen; nine inches in length and under fourteen inches, one dollar and thirty cents per dozen; fourteen inches in length and over, two dollars per dozen.

FIRE ARMS—

169. Muskets and sporting rifles, twenty-five per centum ad valorem.

170. All double-barrelled, sporting, breech loading shot-guns valued at not more than six dollars each, one dollar and fifty cents each; valued at more than six dollars and not more than twelve dollars each, four dollars each; valued at more than twelve dollars each, six dollars each; and in addition thereto on all the above, thirty-five per centum ad valorem. Single-barrel breech-loading shot-guns, one dollar each and thirty-five per centum ad valorem. Revolving pistols valued at not more than one dollar and fifty cents each, forty cents each; valued at more than one dollar and fifty cents, one dollar each; and in addition thereto on all the above pistols, thirty-five per centum ad valorem.

171. Iron or steel sheets, plates, wares, or articles, enameled or glazed with vitreous glasses, forty-five per centum ad valorem.

172. Iron or steel sheets, plates, wares, or articles, enameled or glazed as above with more than one color, or ornamented, fifty per centum ad valorem.

NAILS, SPIKES, TACKS, AND NEEDLES.

173. Cut nails and cut spikes of iron or steel, one cent per pound.

174. Horseshoe nails, hob nails, and all other wrought iron or steel nails not specially provided for in this act, four cents per pound.

175. Wire nails made of wrought iron or steel, two inches long and longer, not lighter than number twelve wire gauge, two cents per pound; from one inch to two inches in length, and lighter than number twelve and not lighter

than number sixteen wire gauge, two and one-half cents per pound; shorter than one inch and lighter than number sixteen wire gauge, four cents per pound.

176. Spikes, nuts, and washers, and horse, mule, or ox shoes, of wrought iron or steel, one and eight-tenths cents per pound.

177. Cut tacks, brads, or sprigs, not exceeding sixteen ounces to the thousand, two and one-fourth cents per thousand; exceeding sixteen ounces to the thousand, two and three-fourths cents per pound.

178. Needles for knitting or sewing machines, crochet-needles and tape-needles and bodkins of metal, thirty-five per centum ad valorem.

179. Needles, knitting, and all others not specially provided for in this act, twenty-five per centum ad valorem.

PLATES—

180. Steel plates engraved, stereotype plates, electro-type plates, and plates of other materials, engraved or lithographed, for printing, twenty-five per centum ad valorem.

181. Railway fish-plates or splice-bars, made of iron or steel, one cent per pound.

182. Rivets of iron or steel, two and one-half cents per pound.

183. SAWS: Cross-cut saws, eight cents per linear foot; mill, pit, and drag-saws, not over nine inches wide, ten cents per linear foot; over nine inches wide, fifteen cents per linear foot; circular saws, thirty per centum ad valorem; hand, back, and all other saws, not specially provided for in this act, forty per centum ad valorem.

184. Screws, commonly called wood-screws, more than two inches in length, five cents per pound; over one inch and not more than two inches in length, seven cents per pound; over one-half inch and not more than one inch in length, ten cents per pound; one-half inch and less in length, fourteen cents per pound.

185. Wheels, or parts thereof, made of iron or steel, and steel-tired wheels for railway purposes, whether wholly or partly finished, and iron or steel locomotive, car, or other railway tires or parts thereof, wholly or partly manufactured, two and one-half cents per pound; and ingots, cogged ingots, blooms, or blanks for the same, without regard to the degree of manufacture, one and three-fourths cents per pound: *Provided*, That when wheels or parts thereof, of iron or steel, are imported with iron or steel axles fitted in them, the wheels and axles together shall be dutiable at the same rate as is provided for the wheels when imported separately.

MISCELLANEOUS METALS AND MANUFACTURES OF.

186. Aluminium or aluminum, in crude form, alloys of any kind in which aluminum is the component material of chief value, fifteen cents per pound.

187. Antimony, as regulus or metal, three fourths of one cent per pound.

188. Argentine, albata, or German silver, unmanufactured, twenty-five per centum ad valorem.

189. Brass, in bars or pigs, old brass, clippings from brass or Dutch-metal, and old sheathing, or yellow metal, fit only for remanufacture, one and one-half cents per pound.

190. Bronze powder, twelve cents per pound; bronze or Dutch-metal, or aluminum, in leaf, eight cents per package of one hundred leaves.

COPPER—

191. Copper imported in the form of ores, one-half of one cent per pound on each pound of fine copper contained therein.

192. Old copper, fit only for remanufacture, clippings from new copper, and all composition metal of which copper is a component material of chief value, not specially provided for in this act, one cent per pound.

193. Regulus of copper and black or coarse copper, and copper cement, one cent per pound on each pound of fine copper contained therein.

194. Copper in plates, bars, ingots, Chili or other pigs, and in other forms, not manufactured, not specially provided for in this act, one and one-fourth cents per pound.

195. Copper in rolled plates, called braziers' copper, sheets, rods, pipes, and copper bottoms, also sheathing or yellow metal of which copper is the component material of chief value, and not composed wholly or in part of iron ungalvanized, thirty-five per centum ad valorem.

GOLD AND SILVER.—

196. Bullions and metal thread of gold, silver, or other metals, not specially provided for in this act, thirty per centum ad valorem.

197. Gold-leaf, two dollars per package of five hundred leaves.

198. Silver-leaf, seventy-five cents per package of five hundred leaves.

LEAD.—

199. Lead ore and lead dross, one and one-half cents per pound: *Provided*, That silver ore and all other ores containing lead shall pay a duty of one and one-half cents per pound on the lead contained therein, according to sample and assay at the port of entry.

200. Lead in pigs and bars, molten and old refuse lead run into blocks and bars, and only scrap-lead fit only to be remanufactured, two cents per pound.

201. Lead in sheets, pipes, shot, glaziers' lead, and lead wire, two and one-half cents per pound.

202. Metallic mineral substances in a crude state and metals unwrought, not specially provided for in this act, twenty per centum ad valorem; mica, thirty-five per centum ad valorem.

NICKEL.—

203. Nickel, nickel oxide, alloy of any kind in which nickel is the component material of chief value, ten cents per pound.

204. Pens, metallic, except gold pens, twelve cents per gross.

205. Pen-holder tips, pen-holders or parts thereof, and gold pens, thirty per centum ad valorem.

206. Pins, metallic, solid-head or other, including hair-pins, safety-pins, and hat, bonnet, shawl, and belt pins, thirty per centum ad valorem.

207. Quicksilver, ten cents per pound. The flasks, bottles, or other vessels in which quicksilver is imported shall be subject to the same rate of duty as they would be subjected to if imported empty.

208. Type-metal, one and one-half cents per pound for the lead contained therein; new types, twenty-five per centum ad valorem.

209. Tin: On and after July first, eighteen hundred and ninety-three, there shall be imposed and paid upon cassiterite or black oxide of tin, and upon bar, block, and pig tin, a duty of four cents per pound: *Provided*, That unless it shall be made to appear to the satisfaction of the President of the United States (who shall make known the fact by proclamation) that the product of the mines of the United States shall have exceeded five thousand tons of cassiterite, and bar, block, and pig tin in any one year prior to July first, eighteen hundred and ninety-five, then all imported cassiterite, bar, block, and pig tin shall after July first, eighteen hundred and ninety-five, be admitted free of duty.

WATCHES.—

210. Chronometers, box or ship's, and parts thereof, ten per centum ad valorem.

211. Watches, parts of watches, watch-cases, watch movements, and watch-glasses, whether separately packed or otherwise, twenty-five per centum ad valorem.

ZINC OR SPELTER.—

212. Zinc in blocks or pigs, one and three-fourths cents per pound.

213. Zinc in sheets, two and one-half cents per pound.

214. Zinc, old and worn out, fit only to be remanufactured, one and one fourth cents per pound.

215. Manufactures, articles, or wares, not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or any other metal, and whether partly or wholly manufactured, forty five per centum ad valorem.

SCHEDULE D.—WOOD AND MANUFACTURES OF.

216. Timber, hewn and sawed, and timber used for spars and in building wharves, ten per centum ad valorem.

217. Timber, squared or sided, not specially provided for in this act, one-half of one cent per cubic foot.

218. Sawed boards, plank, deals, and other lumber of hemlock, white wood, sycamore, white pine and basswood, one dollar per thousand feet board measure; sawed lumber, not specially provided for in this act, two dollars per thousand feet board measure; but when lumber of any sort is planed or finished, in addition to the rates herein provided, there shall be levied and paid for each side so planed or finished fifty cents per thousand feet board measure; and if planed on one side and tongued and grooved, one dollar per thousand feet board measure; and if planed on two sides, and tongued and grooved, one dollar and fifty cents per thousand feet board measure; and in estimating board measure under this schedule no deduction shall be made on board measure on account of planing, tongueing and grooving: *Provided*, That in case any foreign country shall impose an export duty upon pine, spruce, elm, or other logs, or upon stave bolts, shingle wood, or heading blocks exported to the United States from such country, then the duty upon the sawed lumber herein provided for, when imported from such country, shall remain the same as fixed by the law in force prior to the passage of this act.

219. Cedar: That on and after March first, eighteen hundred and ninety-one, paving posts, railroad ties, and telephone and telegraph poles of cedar, shall be dutiable at twenty per centum ad valorem.

220. Sawed boards, plank, deals, and all forms of sawed cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet-

woods not further manufactured than sawed, fifteen per centum ad valorem; veneers of wood, and wood, unmanufactured, not specially provided for in this act, twenty per centum ad valorem.

221. Pine clapboards, one dollar per one thousand.

222. Spruce clapboards, one dollar and fifty cents per one thousand.

223. Hubs for wheels, posts, last-blocks, wagon-blocks, oar-blocks, gun-blocks, heading-blocks, and all like blocks or sticks, rough-hewn or sawed only, twenty per centum ad valorem.

224. Laths, fifteen cents per one thousand pieces.

225. Pickets and palings, ten per centum ad valorem.

226. White pine shingles, twenty cents per one thousand; all other, thirty cents per one thousand.

227. Staves of wood of all kinds, ten per centum ad valorem.

228. Casks and barrels (empty), sugar-box shooks, and packing-boxes and packing-box shooks, of wood, not specially provided for in this act, thirty per centum ad valorem.

229. Chair cane, or reeds wrought or manufactured from rattans or reeds, and whether round, square, or in any other shape, ten per centum ad valorem.

230. House or cabinet furniture, of wood, wholly or partly finished, manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this act, thirty-five per centum ad valorem.

SCHEDULE E.—SUGAR.

231. That on and after July first, eighteen hundred and ninety-one, and until July first, nineteen hundred and five, there shall be paid, from any moneys in the Treasury not otherwise appropriated, under the provisions of section three thousand six hundred and eighty-nine of the Revised Statutes, to the producer of sugar testing not less than ninety degrees by the polariscope, from beets, sorghum, or sugar-cane grown within the United States, or from maple sap produced within the United States, a bounty of two cents per pound; and upon such sugar testing less than ninety degrees by the polariscope, and not less than eighty degrees, a bounty of one and three-fourths cents per pound, under such rules and regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

232. The producer of said sugar to be entitled to said bounty shall have first filed prior to July first of each year with the Commissioner of Internal Revenue a notice of the place of production, with a general description of the machinery and methods to be employed by him, with an estimate of the amount of sugar proposed to be produced in the current or next ensuing year, including the number of maple trees to be tapped, and an application for a license to so produce, to be accompanied by a bond in a penalty, and with sureties to be approved by the Commissioner of Internal Revenue, conditioned that he will faithfully observe all rules and regulations that shall be prescribed for such manufacture and production of sugar.

233. The Commissioner of Internal Revenue, upon receiving the application and bond hereinbefore provided for, shall issue to the applicant a license to produce sugar from sorghum, beets, or sugar-cane grown within the United States, or from maple sap produced within the United States at the place and with the machinery and by the methods described in the application; but said license shall not extend beyond one year from the date thereof.

234. No bounty shall be paid to any person engaged in refining sugars which have been imported into the United States, or produced in the United States upon which the bounty herein provided for has already been paid or applied for, nor to any person unless he shall have first been licensed as herein provided, and only upon sugar produced by such person from sorghum, beets, or sugar-cane grown within the United States, or from maple sap produced within the United States. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall from time to time make all needful rules and regulations for the manufacture of sugar from sorghum, beets, or sugar cane grown within the United States, or from maple sap produced within the United States, and shall, under the direction of the Secretary of the Treasury, exercise supervision and inspection of the manufacture thereof.

235. And for the payment of these bounties the Secretary of the Treasury is authorized to draw warrants on the Treasurer of the United States for such sums as shall be necessary, which sums shall be certified to him by the Commissioner of Internal Revenue, by whom the bounties shall be disbursed, and no bounty shall be allowed or paid to any person licensed as aforesaid in any one year upon any quantity of sugar less than five hundred pounds.

236. That any person who shall knowingly refine or aid in the refining of sugar imported into the United States or upon which the bounty herein provided for has

already been paid or applied for, at the place described in the license issued by the Commissioner of Internal Revenue, and any person not entitled to the bounty herein provided for, who shall apply for or receive the same, shall be guilty of a misdemeanor, and, upon conviction thereof, shall pay a fine not exceeding five thousand dollars, or be imprisoned for a period not exceeding five years, or both, in the discretion of the court.

237. All sugars above number sixteen Dutch standard in color shall pay a duty of five-tenths of one cent per pound: *Provided*, That all such sugars above number sixteen Dutch standard in color shall pay one-tenth of one cent per pound in addition to the rate herein provided for, when exported from, or the product of any country when and so long as such country pays or shall hereafter pay, directly or indirectly, a bounty on the exportation of any sugar that may be included in this grade which is greater than is paid on raw sugars of a lower saccharine strength; and the Secretary of the Treasury shall prescribe suitable rules and regulations to carry this provision into effect: *And provided further*, That all machinery purchased abroad and erected in a beet-sugar factory and used in the production of raw sugar in the United States from beets produced therein shall be admitted duty free until the first day of July, eighteen hundred and ninety-two: *Provided*, That any duty collected on any of the above-described machinery purchased abroad and imported into the United States for the uses above indicated since January first, eighteen hundred and ninety, shall be refunded.

238. Sugar candy and all confectionery, including chocolate confectionery, made wholly or in part of sugar, valued at twelve cents or less per pound, and on sugars after being refined, when tinctured, colored, or in any way adulterated, five cents per pound.

239. All other confectionery, including chocolate confectionery, not specially provided for in this act, fifty per centum ad valorem.

240. Glucose, or grape sugar, three-fourths of one cent per pound.

241. That the provisions of this act providing terms for the admission of imported sugars and molasses and for the payment of a bounty on sugars of domestic production shall take effect on the first day of April, eighteen hundred and ninety-one: *Provided*, That on and after the first day of March, eighteen hundred and ninety-one, and prior to the first day of April, eighteen hundred and ninety-one, sugars not exceeding number sixteen Dutch standard in color may be refined in bond without payment of duty, and such refined sugars may be transported in bond and stored in bonded warehouse at such points of destination as are provided in existing laws relating to the immediate transportation of dutiable goods in bond, under such rules and regulations as shall be prescribed by the Secretary of the Treasury.

SCHEDULE F.—TOBACCO AND MANUFACTURES OF.

242. Leaf tobacco suitable for cigar-wrappers, if not stemmed, two dollars per pound; if stemmed, two dollars and seventy-five cents per pound: *Provided*, That if any portion of any tobacco imported in any bale, box, or package, or in bulk shall be suitable for cigar-wrappers, the entire quantity of tobacco contained in such bale, box, or package, or bulk shall be dutiable; if not stemmed, at two dollars per pound; if stemmed, at two dollars and seventy-five cents per pound.

243. All other tobacco in leaf, unmanufactured and not stemmed, thirty-five cents per pound; if stemmed, fifty cents per pound.

244. Tobacco, manufactured, of all descriptions, not specially enumerated or provided for in this act, forty cents per pound.

245. Snuff and snuff flour, manufactured of tobacco, ground dry, or damp, and pickled, scented, or otherwise, of all descriptions, fifty cents per pound.

246. Cigars, cigarettes, and cheroots of all kinds, four dollars and fifty cents per pound and twenty-five per centum ad valorem; and paper cigars and cigarettes, including wrappers, shall be subject to the same duties as are herein imposed upon cigars.

SCHEDULE G.—AGRICULTURAL PRODUCTS AND PROVISIONS.

ANIMALS, LIVE—

247. Horses and mules, thirty dollars per head: *Provided*, That horses valued at one hundred and fifty dollars and over shall pay a duty of thirty per centum ad valorem.

248. Cattle, more than one year old, ten dollars per head; one year old or less, two dollars per head.

249. Hogs, one dollar and fifty cents per head.

250. Sheep, one year old or more, one dollar and fifty cents per head; less than one year old, seventy-five cents per head.

251. All other live animals, not specially provided for in this act, twenty per centum ad valorem.

BREADSTUFFS AND FARINACEOUS SUBSTANCES—

252. Barley, thirty cents per bushel of forty-eight pounds.
253. Barley-malt, forty-five cents per bushel of thirty four pounds.
254. Barley, pearled, patent, or hulled, two cents per pound.
255. Buckwheat, fifteen cents per bushel of forty-eight pounds.
256. Corn or maize, fifteen cents per bushel of fifty-six pounds.
257. Corn-meal, twenty cents per bushel of forty-eight pounds.
258. Macaroni, vermicelli, and all similar preparations, two cents per pound.
259. Oats, fifteen cents per bushel.
260. Oatmeal, one cent per pound.
261. Rice, cleaned, two cents per pound; uncleaned rice, one and one-quarter cents per pound; paddy, three-quarters of one cent per pound; rice-flower, rice-meal, and rice, broken, which will pass through a sieve known commercially as number twelve wire sieve, one-fourth of one cent per pound.
262. Rye, ten cents per bushel.
263. Rye-flower, one-half of one cent per pound.
264. Wheat, twenty-five cents per bushel.
265. Wheat-flour, twenty-five per centum ad valorem.

DAIRY PRODUCTS—

266. Butter, and substitutes therefor, six cents per pound.
267. Cheese, six cents per pound.
268. Milk, fresh, five cents per gallon.
269. Milk, preserved or condensed, including weight of packages, three cents per pound; sugar of milk, eight cents per pound.

FARM AND FIELD PRODUCTS—

270. Beans, forty cents per bushel of sixty pounds.
271. Beans, pease, and mushrooms, prepared or preserved, in tins, jars, bottles, or otherwise, forty per centum ad valorem.
272. Broom-corn, eight dollars per ton.
273. Cabbages, three cents each.
274. Cider, five cents per gallon.
275. Eggs, five cents per dozen.
276. Eggs, yolk of, twenty-five per centum ad valorem.
277. Hay, four dollars per ton.
278. Honey, twenty cents per gallon.
279. Hops, fifteen cents per pound.
280. Onions, forty cents per bushel.
281. Pease, green, in bulk or in barrels, sacks, or similar packages, forty cents per bushel of sixty pounds; pease, dried, twenty cents per bushel; split pease, fifty cents per bushel of sixty pounds; pease in cartons, papers, or other small packages, one cent per pound.
282. Plants, trees, shrubs, and vines of all kinds, commonly known as nursery stock, not specially provided for in this act, twenty per centum ad valorem.
283. Potatoes, twenty-five cents per bushel of sixty pounds.

SEEDS—

284. Castor beans or seeds, fifty cents per bushel of fifty pounds.
285. Flaxseed or linseed, poppy seed and other oil seeds, not specially provided for in this act, thirty cents per bushel of fifty-six pounds; but no drawback shall be allowed on oil-cake made from imported seed.
286 Garden-seeds, agricultural seeds, and other seeds, not especially provided for in this act, twenty per centum ad valorem.
287. Vegetables of all kinds, prepared or preserved, including pickles and sauces of all kinds, not specially provided for in this act, forty-five per centum ad valorem.
288. Vegetables in their natural state, not specially provided for in this act, twenty-five per centum ad valorem.
289. Straw, thirty per centum ad valorem.
290. Teazles, thirty per centum ad valorem.

FISH—

291. Anchovies and sardines, packed in oil or otherwise, in tin boxes measuring not more than five inches long, four inches wide and three and one-half inches deep, ten cents per whole box; in half-boxes, measuring not more than five inches long, four inches wide, and one and five-eighths inches deep, five cents each; in quarter-boxes, measuring not more than four and three-fourths inches long, three and one-half inches wide, and one and one-fourth inches deep, two and one-half cents each; when imported in any other form, forty per centum ad valorem.

292. Fish, pickled, in barrels or half barrels, and mackerel or salmon, pickled or salted, one cent per pound.

293. Fish, smoked, dried, salted, pickled, frozen, packed in ice, or otherwise prepared for preservation, and fresh fish, not specially provided for in this act, three-fourths of one cent per pound.

294. Herrings, pickled or salted, one-half of one cent per pound; herrings, fresh, one-fourth of one cent per pound.

295. Fish in cans or packages made of tin or other material, except anchovies and sardines and fish packed in any other manner, not specially enumerated or provided for in this act, thirty per centum ad valorem.

296. Cans or packages, made of tin or other metal, containing shell fish admitted free of duty, not exceeding one quart in contents, shall be subject to a duty of eight cents per dozen cans or packages; and when exceeding one quart, shall be subject to an additional duty of four cents per dozen for each additional half quart or fractional part thereof: *Provided*, That until June thirtieth, eighteen hundred and ninety-one, such cans or packages shall be admitted as now provided by law.

FRUITS AND NUTS—

Fruits:

297. Apples, green or ripe, twenty-five cents per bushel.

298. Apples, dried, dessicated, evaporated, or prepared in any manner, and not otherwise provided for in this act, two cents per pound.

299. Grapes, sixty cents per barrel of three cubic feet capacity or fractional part thereof; plums, and prunes, two cents per pound.

300. Figs, two and one-half cents per pound.

301. Oranges, lemons, and limes, in packages of capacity of one and one-fourth cubic feet or less, thirteen cents per package; in packages of capacity exceeding one and one-fourth cubic feet and not exceeding two and one-half cubic feet, twenty-five cents per package; in packages of capacity exceeding two and one-half cubic feet and not exceeding five cubic feet, fifty cents per package; in packages of capacity exceeding five cubic feet, for every additional cubic foot or fractional part thereof, ten cents; in bulk, one dollar and fifty cents per one thousand; and in addition thereto a duty of thirty per centum ad valorem upon the boxes or barrels containing such oranges, lemons, or limes.

302. Raisins, two and one-half cents per pound.

303. Comfits, sweetmeats, and fruits preserved in sugar, sirup, molasses, or spirits not specially provided for in this act, and jellies of all kinds, thirty-five per centum ad valorem.

304. Fruits preserved in their own juices, thirty per centum ad valorem.

305. Orange-peel and lemon-peel, preserved or candied, two cents per pound.

Nuts:

306. Almonds, not shelled, five cents per pound; clear almonds, shelled, seven and one-half cents per pound.

307. Filberts and walnuts of all kinds, not shelled, three cents per pound; shelled, six cents per pound.

308. Peanuts or ground beans, unshelled, one cent per pound; shelled, one and one-half cents per pound.

309. Nuts of all kinds, shelled or unshelled, not specially provided for in this act, one and one-half cents per pound.

MEAT PRODUCTS—

310. Bacon and hams, five cents per pound.

311. Beef, mutton, and pork, two cents per pound.

312. Meats of all kinds, prepared or preserved, not specially provided for in this act, twenty-five per centum ad valorem.

313. Extract of meat, all not specially provided for in this act, thirty-five cents per pound; fluid extract of meat, fifteen cents per pound; and no separate or additional duty shall be collected on such coverings unless as such they are suitable and apparently designed for use other than in the importation of meat extracts.

314. Lard, two cents per pound.

315. Poultry, live, three cents per pound; dressed, five cents per pound.

316. Tallow, one cent per pound; wool grease, including that known commercially as degras or brown wool grease, one-half of one cent per pound.

MISCELLANEOUS PRODUCTS—

317. Chickory-root, burnt or roasted, ground or granulated, or in rolls, or otherwise prepared, and not specially provided for in this act, two cents per pound.

318. Chocolate, (other than chocolate confectionery and chocolate commercially known as sweetened chocolate,) two cents per pound.

319. Cocoa, prepared or manufactured, not specially provided for in this act, two cents per pound.

320. Cocoa-butter or cocoa-butterine, three and one-half cents per pound.

321. Dandelion-root and acorns prepared, and other articles used as coffee, or as substitutes for coffee, not specially provided for in this act, one and one-half cents per pound.

SALT.

322. Salt in bags, sacks, barrels, or other packages twelve cents per one hundred pounds in bulk, eight cents per one hundred pounds: *Provided*, That imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, under such regulations as the Secretary of the Treasury shall prescribe; and upon proof that the salt has been used for either of the purposes stated in this proviso, the duties on the same shall be remitted: *Provided further*, That exporters of meats, whether packed or smoked, which have been cured in the United States with imported salt, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such meats have been cured with imported salt, have refunded to them from the Treasury the duties paid on the salt so used in curing such exported meats, in amounts not less than one hundred dollars.

323. Starch, including all preparations, from whatever substance produced, fit for use as starch, two cents per pound.

324. Dextrine, burnt starch, gum substitute, or British gum, one and one-half cents per pound.

325. Mustard, ground or preserved, in bottles or otherwise, ten cents per pound.

326. Spices, ground or powdered, not specially provided for in this act, four cents per pound; cayenne pepper, two and one-half cents per pound, unground; sage, three cents per pound.

327. Vinegar, seven and one half cents per gallon. The standard for Vinegar shall be taken to be that strength which requires thirty-five grains of bicarbonate of potash to neutralize one ounce troy of vinegar.

328. There shall be allowed on the imported tin-plate used in the manufacture of cans, boxes, packages, and all articles of tin ware exported, either empty or filled with domestic products, a drawback equal to the duty paid on such tin-plate, less one per centum of such duty, which shall be retained for the use of the United States.

SCHEDULE H.—SPIRITS, WINES, AND OTHER BEVERAGES.

SPIRITS.—

329. Brandy and other spirits manufactured or distilled from grain or other materials, and not specially provided for in this act, two dollars and fifty cents per proof gallon.

330. Each and every gauge or wine gallon of measurement shall be counted as at least one proof gallon; and the standard for determining the proof of brandy and other spirits or liquors of any kind imported shall be the same as that which is defined in the laws relating to internal revenue; but any brandy or other spirituous liquors, imported in casks of less capacity than fourteen gallons, shall be forfeited to the United States: *Provided*, That it shall be lawful for the Secretary of the Treasury, in his discretion, to authorize the ascertainment of the proof of wines, cordials, or other liquors, by distillation or otherwise, in case where it is impracticable to ascertain such proof by the means prescribed by existing law or regulations.

331. On all compounds or preparations of which distilled spirits are a component part of chief value, not specially provided for in this act, there shall be levied a duty not less than that imposed upon distilled spirits.

332. Cordials, liquors, arrack, absinthe, kirschwasser, ratafia, and other spirituous beverages or bitters of all kinds containing spirits, and not specially provided for in this act, two dollars and fifty cents per proof gallon.

333. No lower rate or amount of duty shall be levied, collected, and paid on brandy, spirits, and other spirituous beverages than that fixed by law for the description of first proof; but it shall be increased in proportion for any greater strength than the strength of first proof, and all imitations of brandy or spirits or wines imported by any names whatever shall be subject to the highest rate of duty provided for the genuine articles respectively intended to be represented, and in no case less than one dollar and fifty cents per gallon.

334. Bay-rum or bay-water, whether distilled or compounded, of first proof, and in proportion for any greater strength than first proof, one dollar and fifty cents per gallon.

WINES:

335. Champagne and all other sparkling wines, in bottles containing each not more than one quart and more than one pint, eight dollars per dozen; containing not more than one pint each and more than one-half pint, four dollars per dozen; containing one-half pint each or less, two dollars per dozen; in bottles or other vessels containing more than one quart each, in addition to eight dollars per dozen bottles, on the quantity in excess of one quart, at the rate of two dollars and fifty cents per gallon.

336. Still wines, including ginger wine or ginger cordial and vermuth, in casks, fifty cents per gallon; in bottles or jugs, per case of one dozen bottles or jugs, containing each not more than one quart and more than one pint, or twenty-four bottles or jugs containing each not more than one pint, one dollar and sixty cents per case; and any excess beyond these quantities found in such bottles or jugs shall be subject to a duty of five cents per pint or fractional part thereof, but no separate or additional duty shall be assessed on the bottles or jugs: *Provided*, That any wines, ginger-cordial, or vermuth imported containing more than twenty-four per centum of alcohol shall be forfeited to the United States: *And provided further*, That there shall be no constructive or other allowance for breakage, leakage, or damage on wines, liquors, cordials, or distilled spirits. Wines, cordials, brandy, and other spirituous liquors imported in bottles or jugs shall be packed in packages containing not less than one dozen bottles or jugs in each package; and all such bottles or jugs shall pay an additional duty of three cents for each bottle or jug unless specially provided for in this act.

337. Ale, porter, and beer, in bottles or jugs, forty cents per gallon, but no separate or additional duty shall be assessed on the bottles or jugs; otherwise than in bottles or jugs, twenty cents per gallon.

338. Malt extract, fluid, in casks, twenty cents per gallon; in bottles or jugs, forty cents per gallon; solid or condensed, forty per centum ad valorem.

339. Cherry juice and prune juice, or prune wine, and other fruit juice, not specially provided for in this act, containing not more than eighteen per centum of alcohol, sixty cents per gallon; if containing more than eighteen per centum of alcohol, two dollars and fifty cents per proof gallon.

340. Ginger-ale, ginger-beer, lemonade, soda-water, and other similar waters in plain green or colored molded or pressed glass bottles, containing each not more than three-fourths of a pint, thirteen cents per dozen; containing more than three-fourths of a pint each and not more than one and one-half pints, twenty-six cents per dozen; but no separate or additional duty shall be assessed on the bottles; if imported otherwise than in plain green or colored molded or pressed glass bottles, or in such bottles containing more than one and one-half pints each, fifty cents per gallon and in addition thereto, duty shall be collected on the bottles, or other coverings, at the rates which would be chargeable thereon if imported empty.

341. All mineral waters, and all imitations of natural mineral waters, and all artificial mineral waters not specially provided for in this act, in green or colored glass bottles, containing not more than one pint, sixteen cents per dozen bottles. If containing more than one pint and not more than one quart, twenty-five cents per dozen bottles. But no separate duty shall be assessed upon the bottles. If imported otherwise than in plain green or colored glass bottles, or if imported in such bottles containing more than one quart, twenty cents per gallon, and in addition thereto duty shall be collected upon the bottles or other covering at the same rates that would be charged if imported empty or separately.

SCHEDULE I.—COTTON MANUFACTURERS.

342. Cotton thread, yarn, warps, or warp-yarn, whether single or advanced beyond the condition of single, by grouping or twisting two or more single yarns together, whether on beams or in bundles, skeins, or cops, or in any other form, except spool-thread of cotton, hereinafter provided for, valued at not exceeding twenty-five cents per pound, ten cents per pound; valued at over twenty-five cents per pound and not exceeding forty cents per pound, eighteen cents per pound; valued at over forty cents per pound and not exceeding fifty cents per pound, twenty-three cents per pound; valued at over fifty cents per pound and not exceeding sixty cents, per pound, twenty-eight cents per pound; valued at over sixty cents per pound and not exceeding seventy cents per pound, thirty-three cents per pound; valued at over seventy cents per pound and not exceeding eighty cents per pound, thirty-eight cents per pound; valued at over eighty cents per pound and not exceeding one dollar per pound, forty-eight cents per pound; valued at over one dollar per pound, fifty per centum ad valorem.

343. Spool-thread of cotton, containing on each spool not exceeding one hundred yards of thread, seven cents per dozen; exceeding one hundred yards on each spool, for every additional one hundred yards of thread or fractional part thereof in excess of one hundred yards, seven cents per dozen spools.

344. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, and not exceeding fifty threads to the square inch, counting the warp and filling, two cents per square yard; if bleached, two and one-half cents per square yard; if dyed, colored, stained, painted, or printed, four cents per square yard.

345. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding fifty and not exceeding one hundred threads to the square inch, counting the warp and filling, two and one-fourth cents per square yard; if bleached, three cents per square yard; if dyed, colored, stained, painted, or printed, four cents per square yard: *Provided*, That on all cotton cloth not exceeding one hundred threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over six and one-half cents per square yard; bleached, valued at over nine cents per square yard; and dyed, colored, stained, painted, or printed, valued at over twelve cents per square yard, there shall be levied, collected, and paid a duty of thirty five per centum ad valorem.

346. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, three cents per square yard; if bleached, four cents per square yard; if dyed, colored, stained, painted, or printed, five cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over seven and one-half cents per square yard; bleached, valued at over ten cents per square yard; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of forty per centum ad valorem.

347. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, three and a half cents per square yard; if bleached, four and one-half cents per square yard; if dyed, colored, stained, painted, or printed five and one-half cents per square yard: *Provided*, That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over eight cents per square yard; bleached valued at over ten cents per square yard; dyed, colored, stained, painted, or printed, valued at over twelve cents per square yard, there shall be levied, collected, and paid a duty of forty-five per centum ad valorem.

348. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding two hundred threads to the square inch, counting the warp and filling, four and one-half cents per square yard; if bleached, five and one-half cents per square yard; if dyed, colored, stained, painted, or printed, six and three-fourths cents per square yard: *Provided*, That on all such cotton cloths not bleached, dyed, colored, stained, painted, or printed, valued at over ten cents per square yard; bleached, valued at over twelve cents per square yard; and dyed, colored, stained, painted, or printed, valued at over fifteen cents per square yard, there shall be levied, collected, and paid a duty of forty-five per centum ad valorem: *Provided further*, That on cotton cloth, bleached, dyed, colored, stained, painted or printed, containing an admixture of silk, and not otherwise provided for, there shall be levied, collected, and paid a duty of ten cents per square yard, and in addition thereto thirty-five per centum ad valorem.

349. Clothing ready made, and articles of wearing apparel of every description, handkerchiefs, and neckties or neck wear, composed of cotton or other vegetable fiber, or of which cotton or other vegetable fiber is the component material of chief value, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, all of the foregoing not specially provided for in this act, fifty per centum ad valorem: *Provided*, That all such clothing ready made and articles of wearing apparel having India rubber as a component material (not including gloves or elastic articles that are specially provided for in this act), shall be subject to a duty of fifty cents per pound, and in addition thereto fifty per centum ad valorem.

350. Plushes, velvets, velveteens, corduroys, and all pile fabrics composed of cotton or other vegetable fiber, not bleached, dyed, colored, stained, painted, or printed, ten cents per square yard and twenty per centum ad valorem; on all such goods if bleached, twelve cents per square yard and twenty per centum ad valorem; if dyed, colored, stained, painted, or printed, fourteen cents per square yard and twenty per centum ad valorem; but none of the foregoing articles in this paragraph shall pay a less rate of duty than forty per centum ad valorem.

351. Chenille curtains, table covers, and all goods manufactured of cotton chenille, or of which cotton chenille forms the component material of chief value, sixty per centum ad valorem.

352. Stockings, hose and half-hose, made on knitting machines or frames, composed of cotton or other vegetable fiber and not otherwise specially provided for in this act, and shirts and drawers composed of cotton, valued at not more than one dollar and fifty cents per dozen, thirty-five per centum ad valorem.

353. Stockings, hose, and half hose, selvedged, fashioned, narrowed, or shaped wholly or in part by knitting machines or frames, or knit by hand, including such as are commercially known as seamless stockings, hose or half-hose, all of the above composed of cotton or other vegetable fiber, finished or unfinished, valued at not more than sixty cents per dozen pairs, twenty cents per dozen pairs, and in addition thereto twenty per centum ad valorem; valued at more than sixty cents per dozen pairs and not more than two dollars per dozen pairs, fifty cents per dozen pairs, and in addition thereto thirty per centum ad valorem; valued at more than two dollars per dozen pairs, and not more than four dollars per dozen pairs, seventy-five cents per dozen pairs, and in addition thereto, forty per centum ad valorem; valued at more than four dollars per dozen pairs, one dollar per dozen pairs, and in addition thereto, forty per centum ad valorem; and all shirts and drawers composed of cotton or other vegetable fiber, valued at more than one dollar and fifty cents per dozen and not more than three dollars per dozen, one dollar per dozen, and in addition thereto, thirty-five per centum ad valorem; valued at more than three dollars per dozen, and not more than five dollars per dozen, one dollar and twenty-five cents per dozen, and in addition thereto, forty per centum ad valorem; valued at more than five dollars per dozen, and not more than seven dollars per dozen, one dollar and fifty cents per dozen, and in addition thereto, forty per centum ad valorem; valued at more than seven dollars per dozen, two dollars per dozen, and in addition thereto, forty per centum ad valorem.

354. Cotton cords, braids, boot, shoe, and corset lacings, thirty-five cents per pound; cotton gimps, galloons, webbing, goring, suspenders, and braces, any of the foregoing which are elastic or non-elastic, forty per centum ad valorem: *Provided*, That none of the articles included in this paragraph shall pay a less raté of duty than forty per centum ad valorem.

355. Cotton damask, in the piece or otherwise, and all manufactures of cotton not specially provided for in this act, forty per centum ad valorem.

SCHEDULE J.—FLAX, HEMP, AND JUTE, AND MANUFACTURES OF.

356. Flax straw, five dollars per ton.

357. Flax, not hackled or dressed, one cent per pound.

358. Flax, hackled, known as "dressed line," three cents per pound.

359. Tow, of flax or hemp, one half of one cent per pound.

360. Hemp twenty-five dollars per ton; hemp, hackled, known as line of hemp, fifty dollars per ton.

361. Yarn, made of jute, thirty-five per centum ad valorem.

362. Cables, cordage, and twine (except binding twine composed in whole or in part of istle or Tampico fiber, manila, sisal grass, or sunn), one and one-half cents per pound; all binding twine manufactured in whole or in part from istle or Tampico fiber, manila, sisal grass, or sunn, seven-tenths of one cent per pound; cables and cordage made of hemp, two and one-half cents per pound; tarred cables and cordage, three cents per pound.

363. Hemp and jute carpets and carpetings, six cents per square yard.

364. Burlaps, not exceeding sixty inches in width, of flax, jute or hemp, or of which flax, jute, or hemp, or either of them, shall be the component material of chief value (except such as may be suitable for bagging for cotton), one and five-eighths cents per pound.

365. Bags for grain made of burlaps, two cents per pound.

366. Bagging for cotton, gunny cloth, and all similar material suitable for covering cotton, composed in whole or in part of hemp, flax, jute, or jute butts, valued at six cents or less per square yard, one and six-tenths cents per square yard; valued at more than six cents per square yard, one and eight-tenths cents per square yard.

367. Flax gill-netting, nets, webs, and seines, when the thread or twine of which they are composed is made of yarn of a number not higher than twenty, fifteen cents per pound, and thirty-five per centum ad valorem; when made of threads or twines, the yarn of which is finer than number twenty, twenty cents per pound and in addition thereto forty-five per centum ad valorem.

368. Linen hydraulic hose, made in whole or in part of flax, hemp or jute, twenty cents per pound.

369. Oil-cloth for floors, stamped, painted, or printed, including linoleum, corticene, cork-carpets, figured or plain, and all other oil-cloth (except silk oil-cloth), and water-proof cloth, not specially provided for in this act, valued at twenty-five cents or less per square yard, forty per centum ad valorem; valued above twenty-five cents per square yard, fifteen cents per square yard and thirty per centum ad valorem.

370. Yarns or threads composed of flax or hemp, or of a mixture of either of these substances, valued at thirteen cents or less per pound, six cents per pound: valued at more than thirteen cents per pound, forty-five per centum ad valorem.

371. All manufactures of flax or hemp, or of which these substances, or either of them, is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem: *Provided*, That until January first, eighteen hundred and ninety-four, such manufactures of flax containing more than one hundred threads to the square inch, counting both warp and filling, shall be subject to a duty of thirty-five per centum ad valorem in lieu of the duty herein provided.

372. Collars and cuffs, composed entirely of cotton, fifteen cents per dozen pieces and thirty-five per centum ad valorem; composed in whole or in part of linen, thirty cents per dozen pieces and forty per centum ad valorem: shirts, and all articles of wearing apparel of every description, not specially provided for in this act, composed wholly or in part of linen, fifty-five per centum ad valorem.

373. Laces, edgings, embroideries, insertings, neck ruffings, ruchings, trimmings, tuckings, lace window-curtains, and other similar tamboured articles, and articles embroidered by hand or machinery, embroidered and hem stitched handkerchiefs, and articles made wholly or in part of lace, ruffings, tuckings, or ruchings, all of the above named articles, composed of flax, jute, cotton, or other vegetable fiber, or of which these substances or either of them, or a mixture of any of them is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: *Provided*, That articles of wearing apparel, and textile fabrics, when embroidered by hand or machinery, and whether specially or otherwise provided for in this act, shall not pay a less rate of duty than that fixed by the respective paragraphs and schedules of this act upon embroideries of the materials of which they are respectively composed.

374. All manufactures of jute, or other vegetable fiber, except flax, hemp or cotton, or of which jute, or other vegetable fiber, except flax, hemp or cotton, is the component material of chief value, not specially provided for in this act, valued at five cents per pound or less, two cents per pound; valued above five cents per pound, forty per centum ad valorem.

Schedule K. Wool and Manufactures of Wool.

375. All wools, hair of the camel, goat, alpaca, and other like animals shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:

376. Class one, that is to say Merino, mestiza, metz, or metis wools, or other wools of Merino blood, immediate or remote, Down clothing wools, and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

377. Class two, that is to say Leicester, Cotswold, Lincolnshire, Down combing wools, Canada long wools, or other like combing wools of English blood, and usually known by the terms herein used, and also hair of the camel, goat, alpaca, and other like animals.

378. Class three, that is to say Donskoi, native South American, Cordova, Valparaiso, native Smyrna, Russian camels hair, and including all such wools of like character as have been heretofore usually imported into the United States from Turkey, Greece, Egypt, Syria, and elsewhere, excepting improved wools hereinafter provided for.

379. The standard samples of all wools which are now or may be hereafter deposited in the principal custom-houses of the United States, under the authority of the Secretary of the Treasury, shall be the standards for the classification of wools under this act, and the Secretary of the Treasury shall have the authority to renew these standards and to make such additions to them from time to time as may be required, and he shall cause to be deposited like standards in other custom-houses of the United States when they may be needed.

380. Whenever wools of class three shall have been improved by the admixture of Merino or English blood from their present character as represented by the standard samples now or hereafter to be deposited in the principal custom-houses of the United States, such improved wools shall be classified for duty either as class one or as class two, as the case may be.

381. The duty on wools of the first class which shall be imported washed shall be twice the amount of the duty to which they would be subjected if imported unwashed: and the duty on wools of the first and second classes which shall be imported scoured shall be three times the duty to which they would be subjected if imported unwashed.

382. Unwashed wools shall be considered such as shall have been shorn from the sheep without any cleansing; that is, in their natural condition. Washed wools shall be considered such as have been washed with water on the sheep's back. Wool washed in any other manner than on the sheep's back shall be considered as scoured wool.

383. The duty upon wool of the sheep or hair of the camel, goat, alpaca, and other like animals which shall be imported in any other than ordinary condition, or which shall be changed in its character or condition for the purpose of evading the duty, or which shall be reduced in value by the admixture of dirt or any other foreign substance, or which has been sorted or increased in value by the rejection of any part of the original fleece, shall be twice the duty to which it would be otherwise subject: *Provided*, That skirted wools as now imported are hereby excepted. Wools on which a duty is assessed amounting to three times or more than that which would be assessed if said wool was imported unwashed, such duty shall not be doubled on account of its being sorted. If any bale or package of wool or hair specified in this act imported as of any specified class, or claimed by the importer to be dutiable as of any specified class shall contain any wool or hair subject to a higher rate of duty than the class so specified, the whole bale or package shall be subject to the highest rate of duty chargeable on wool of the class subject to such higher rate of duty, and if any bale or package be claimed by the importer to be shoddy, mungo, flocks, wool, hair, or other material of any class specified in this act, and such bale contain any admixture of any one or more of said materials, or of any other material, the whole bale or package shall be subject to duty at the highest rate imposed upon any article in said bale or package.

384. The duty upon all wools and hair of the first class shall be eleven cents per pound, and upon all wools or hair of the second class twelve cents per pound.

385. On wools of the third class and on camel's hair of the third class the value whereof shall be thirteen cents or less per pound, including charges, the duty shall be thirty-two per centum ad valorem.

386. On wools of the third class, and on camel's hair of the third class, the value whereof shall exceed thirteen cents per pound including charges, the duty shall be fifty per cent. ad valorem.

387. Wools on the skin shall pay the same rate as other wools, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe.

388. On noils, shoddy, top waste, slubbing waste, roving waste, ring waste, yarn waste, garnetted waste, and all other wastes composed wholly or in part of wool, the duty shall be thirty cents per pound.

389. On woolen rags, mungo, and flocks, the duty shall be ten cents per pound.

390. Wools and hair of the camel, goat, alpaca, or other like animals, in the form of roping, roving, or tops, and all wool and hair which have been advanced in any manner or by any process of manufacture beyond the washed or scoured condition, not specially provided for in this act, shall be subject to the same duties as are imposed upon manufactures of wool not specially provided for in this act.

391. On woolen and worsted yarns made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, valued at not more than thirty cents per pound, the duty per pound shall be two and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto, thirty-five per centum ad valorem; valued at more than thirty cents and not more than forty cents per pound, the duty per pound shall be three times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto thirty-five per centum ad valorem; valued at more than forty cents per pound, the duty per pound shall be three and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum ad valorem.

392. On woolen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames, and all manufactures of every description made wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, not specially provided for in this act, valued at not more than thirty cents per pound, the duty per pound shall be three times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum ad valorem; valued at more than thirty and not more than forty cents per pound, the duty per pound shall be three and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum ad valorem; valued at above forty cents per pound, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem.

393. On blankets, hats of wool, and flannels for underware composed wholly or in part of wool, the hair of the camel, goat, alpaca, or other animals, valued at not more than thirty cents per pound, the duty per pound shall be the same as the duty im-

posed by this act on one pound and one-half of unwashed wool of the first class, and in addition thereto thirty per centum ad valorem; valued at more than thirty and not more than forty cents per pound, the duty per pound shall be twice the duty imposed by this act on a pound of unwashed wool of the first class; valued at more than forty cents and not more than fifty cents per pound, the duty per pound shall be three times the duty imposed by this act on a pound of unwashed wool of the first class; and in addition thereto upon all the above-named articles thirty-five per centum ad valorem. On blankets and hats of wool composed wholly or in part of wool, the hair of the camel, goat, alpaca, or other animal, valued at more than fifty cents per pound, the duty per pound shall be three and a half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto forty per centum ad valorem. Flannels composed wholly or in part of wool, the hair of the camel, goat, alpaca, or other animals, valued at above fifty cents per pound shall be classified and pay the same duty as women's and children's dress goods, coat linings, Italian cloths, and goods of similar character and description provided by this act.

394. On women's and children's dress goods, coat linings, Italian cloths, and goods of similar character or description of which the warp consists wholly of cotton or other vegetable material, with the remainder of the fabric composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, valued at not exceeding fifteen cents per square yard, seven cents per square yard, and in addition thereto forty per centum ad valorem; valued at above fifteen cents per square yard, eight cents per square yard, and in addition thereto fifty per centum ad valorem: *Provided*, That on all such goods weighing over four ounces per square yard the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem.

395. On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar descriptions or character composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard, and in addition thereto fifty per centum ad valorem: *Provided*, That on all such goods weighing over four ounces per square yard the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem.

396. On clothing, ready made, and articles of wearing apparel of every description, made up or manufactured wholly or in part not specially provided for in this act, felts not woven, and not specially provided for in this act, and plushes and other pile fabrics, all the foregoing, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals the duty per pound shall be four and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto sixty per centum ad valorem.

397. On cloaks, dolmans, jackets, talmas, ulsters, or other outside garments for ladies and children's apparel and goods of similar description, or used for like purposes, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, made up or manufactured wholly or in part, the duty per pound shall be four and one-half times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto sixty per centum ad valorem.

398. On webbings, gorings, suspenders, braces, beltings, bindings, braids, galloons, fringes, gimps, cords, cords and tassels, dress trimmings, laces and embroideries, head nets, buttons, or barrel buttons, or buttons of other forms, for tassels or ornaments, wrought by hand or braided by machinery any of the foregoing which are elastic or non-elastic, made of wool, worsted, the hair of the camel, goat, alpaca, or other animals, or of which wool, worsted, the hair of the camel, goat, alpaca, or other animals is a component material, the duty shall be sixty cents per pound, and in addition thereto sixty per centum ad valorem.

399. Aubusson, Axminster, Moquette, and Chenille carpets, figured or plain, carpets woven whole for rooms, and all carpets or carpeting of like character or description, and oriental, Berlin, and other similar rugs, sixty cents per square yard, and in addition thereto forty per centum ad valorem.

400. Saxony, Wilton, and Tournay velvet carpets, figured or plain, and all carpets or carpenting of like character or description, sixty cents per square yard, and in addition thereto forty per centum ad valorem.

401. Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, forty-four cents per square yard, and in addition thereto forty per centum ad valorem.

402. Velvet and tapestry velvet carpets, figured or plain, printed on the warp or otherwise, and all carpets or carpeting of like character or description, forty cents per square yard, and in addition thereto forty per centum ad valorem.

403. Tapestry Brussels carpets, figured or plain, and all carpets or carpeting of like character or description, printed on the warp or otherwise, twenty-eight cents per square yard, and in addition thereto forty per centum ad valorem.

404. Treble ingrain, three-ply and all chain Venetian carpets, nineteen cents per quare yard, and in addition thereto forty per centum ad valorem.

405. Wool Dutch and two-ply ingrain carpets, fourteen cents per square yard, and in addition thereto forty per centum ad valorem.

406. Druggets and bockings, printed, colored, or otherwise, twenty-two cents per square yard, and in addition thereto forty per centum ad valorem. Felt carpeting, figured or plain, eleven cents per square yard, and in addition thereto forty per centum ad valorem.

407. Carpets and carpenting of wool, flax or cotton, or composed in part of either, not specially provided for in this act, fifty per centum ad valorem.

408. Mats, rugs, screens, covers, hassocks, bed sides, art squares, and other portions of carpets or carpeting made wholly or in part of wool, and not specially provided for in this act, shall be subjected to the rate of duty herein imposed on carpets or carpetings of like character or description.

Schedule L.—Silk and Silk Goods.

409. Silk partially manufactured from cocoons or from waste-silk, and not further advanced or manufactured than carded or combed silk, fifty cents per pound.

410. Thrown silk, not more advanced than singles, tram, organzine, sewing silk, twist, floss, and silk threads or yarns of every description, except spun silk, thirty per centum ad valorem; spun silk in skeins or cops or on beams, thirty-five per centum ad valorem.

411. Velvets, plushes, or other pile fabrics, containing, exclusive of selvedges, less than seventy-five per centum in weight of silk, one dollar and fifty cents per pound and fifteen per centum ad valorem; containing, exclusive of selvedges, seventy-five per centum or more in weight of silk, three dollars and fifty cents per pound, and fifteen per centum ad valorem; but in no case shall any of the foregoing articles pay a less rate of duty than fifty per centum ad valorem.

412. Webbings, gorings, suspenders, braces, beltings, bindings, braids, galloons, fringes, cords and tassels, any of the foregoing which are elastic or non-elastic, buttons, and ornaments, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem.

413. Laces and embroideries, handkerchiefs, neck rufflings and ruchings, clothing ready-made, and articles of wearing apparel of every description, including knit goods, made up or manufactured wholly or in part by the tailor, seamstress, or manufacturer, composed of silk, or of which silk is the component material of chief value, not specially provided for in this act, sixty per centum ad valorem: *Provided*, That all such clothing ready made and articles of wearing apparel when composed in part of India rubber (not including gloves or elastic articles that are specially provided for in this act), shall be subject to a duty of eight cents per ounce, and in addition thereto sixty per centum ad valorem.

414. All manufactures of silk, or of which silk is the component material of chief value, not specially provided for in this act, fifty per centum ad valorem: *Provided*, That all such manufactures of which wool, or the hair of the camel, goat, or other like animals is a component material, shall be classified as manufactures of wool.

Schedule M.—Pulp, Papers, and Books,

Pulp and Paper.—

415. Mechanically ground wood pulp, two dollars and fifty cents per ton dry weight; chemical wood pulp unbleached, six dollars per ton dry weight; bleached, seven dollars per ton dry weight.

416. Sheathing paper, ten per centum ad valorem.

417. Printing paper unsized, suitable only for books and newspapers, fifteen per centum ad valorem.

418. Printing paper sized or glued, suitable only for books and newspapers, twenty per centum ad valorem.

419. Papers known commercially as copying paper, filtering paper, silver paper, and all tissue paper, white or colored, made up in copying books, reams, or in any other form, eight cents per pound, and in addition thereto fifteen per centum ad valorem; albumenized or sensitized paper, thirty-five per centum ad valorem.

420. Papers known commercially as surface-coated papers, and manufactures thereof, card-boards, lithographic prints from either stone or zinc, bound or unbound (except illustrations when forming a part of a periodical, newspaper, or in printed books accompanying the same), and all articles produced either in whole or in part by lithographic process, and photograph, autograph, and scrap albums, wholly or partially manufactured, thirty-five per centum ad valorem.

MANUFACTURES OF PAPER.

421. Paper envelopes, twenty-five cents per thousand.

422. Paper hangings and paper for screens or fire-boards, writing-paper, drawing-paper, and all other paper not specially provided for in this act, twenty-five per centum ad valorem.

423. Books, including blank books of all kinds, pamphlets and engravings, bound or unbound, photographs, etchings, maps, charts, and all printed matter not specially provided for in this act, twenty-five per centum ad valorem.

424. Playing cards, fifty cents per pack.

425. Manufactures of paper, or of which paper is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem.

SCHEDULE N.—SUNDRIES.

426. Bristles, ten cents per pound.

427. Brushes, and brooms of all kinds, including feather dusters and hair pencils in quills, forty per centum ad valorem.

BUTTONS AND BUTTON FORMS.—

428. Button forms: Lastings, mohair, cloth, silk, or other manufactures of cloth, woven or made in patterns of such size, shape, or form, or cut in such manner as to be fit for buttons exclusively, ten per centum ad valorem.

429. Buttons commercially known as Agate buttons, twenty-five per centum ad valorem. Pearl and shell buttons, two and one-half cents per line button measure of one-fortieth of one inch per gross, and in addition thereto twenty-five per centum ad valorem.

430. Ivory, vegetable ivory, bone or horn buttons, fifty per centum ad valorem.

431. Shoe-buttons, made of paper, board, papier maché, pulp, or other similar material not specially provided for in this act, valued at not exceeding three cents per gross, one cent per gross.

432. Coal, bituminous, and shale, seventy-five cents per ton of twenty-eight bushels, eighty pounds to the bushel: coal slack or culm, such as will pass through a half-inch screen, thirty cents per ton of twenty-eight bushels, eighty pounds to the bushel.

433. Coke, twenty per centum ad valorem.

434. Cork bark, cut into squares or cubes, ten cents per pound; manufactured corks, fifteen cents per pound.

435. Dice, draughts, chess-men, chess-balls, and billiard, pool, and bagatelle balls, of ivory, bone, or other materials, fifty per centum ad valorem.

436. Dolls, doll-heads, toy marbles of whatever material composed, and all other toys not composed of rubber, china, porcelain, parian, bisque, earthen or stoneware, and not specially provided for in this act, thirty-five per centum ad valorem.

437. Emery grains, and emery manufactured, ground, pulverized, or refined, one cent per pound.

EXPLOSIVE SUBSTANCES.—

438. Fire-crackers of all kinds, eight cents per pound, but no allowance shall be made for tare or damage thereon.

439. Fulminates, fulminating powders, and like articles, not specially provided for in this act, thirty per centum ad valorem.

440. Gunpowder, and all explosive substances used for mining, blasting, artillery, or sporting purposes, when valued at twenty cents or less per pound, five cents per pound; valued above twenty cents per pound, eight cents per pound.

441. Matches, friction or lucifer, of all descriptions, per gross of one hundred and forty-four boxes, containing not more than one hundred matches per box, ten cents per gross; when imported otherwise than in boxes containing not more than one hundred matches each, one cent per one thousand matches.

442. Percussion-caps, forty per centum ad valorem.

443. Feathers and downs of all kinds, crude or not dressed, colored, or manufactured, not specially provided for in this act, ten per centum ad valorem; when dressed, colored, or manufactured, including quilts of down and other manufactures of down, and also including dressed and finished birds suitable for millinery ornaments, and artificial and ornamental feathers and flowers, or parts thereof, of whatever material composed, not specially provided for in this act, fifty per centum ad valorem.

444. Furs, dressed on the skin but not made up into articles, and furs not on the skin, prepared for hatters' use, twenty per centum ad valorem.

445. Glass beads, loose, unthreaded or unstrung, ten per centum ad valorem.

446. Gun-wads of all descriptions, thirty-five per centum ad valorem.

447. Hair, human, if clean or drawn but not manufactured, twenty per centum ad valorem.

448. Hair-cloth, known as "crinoline-cloth," eight cents per square yard.
449. Hair-cloth, known as "hair seating," thirty cents per square yard.
450. Hair, curled, suitable for beds or mattresses, fifteen per centum ad valorem.
451. Hats, for men's, women's, and children's wear, composed of the fur of the rabbit, beaver, or other animals or of which such fur is the component material of chief value, wholly or partially manufactured, including fur hat bodies, fifty-five per centum ad valorem.

JEWELRY AND PRECIOUS STONES—

452. Jewelry: All articles, not elsewhere specially provided for in this act composed of precious metals or imitations thereof, whether set with coral, jet, or pearls, or with diamonds, rubies, cameos, or other precious stones, or imitations thereof, or otherwise, and which shall be known commercially as "jewelry," and cameos in frames, fifty per centum ad valorem.
453. Pearls, ten per centum ad valorem.
454. Precious stones of all kinds, cut but not set, ten per centum ad valorem; if set, and not specially provided for in this act, twenty-five per centum ad valorem. Imitations of precious stones composed of paste or glass not exceeding one inch in dimensions, not set, ten per centum ad valorem.

LEATHER AND MANUFACTURES OF—

455. Bend or belting leather and sole leather, and leather not specially provided for in this act, ten per centum ad valorem.
456. Calf-skins, tanned, or tanned and dressed, dressed upper leather, including patent enameled, and japanned leather, dressed or undressed, and finished; chamois or other skins not specially enumerated or provided for in this act, twenty per centum ad valorem; book-binders' calf-skins, kangaroo, sheep and goat skins, including lamb and kid skins, dressed and finished, twenty per centum ad valorem; skins for morocco, tanned but unfinished, ten per centum ad valorem; piano forte leather and piano forte action leather, thirty-five per centum ad valorem; japanned calf-skins, thirty per centum ad valorem; boots and shoes, made of leather, twenty-five per centum ad valorem.
457. But leather cut into shoe uppers or vamps, or other forms, suitable for conversion into manufactured articles, shall be classified as manufactures of leather, and pay duty accordingly.
458. Gloves of all descriptions, composed wholly or in part of kid or other leather, and whether wholly or partly manufactured, shall pay duty at the rates fixed in connection with the following specified kinds thereof, fourteen inches in extreme length when stretched to the full extent, being in each case hereby fixed as the standard, and one dozen pairs as the basis, namely: Ladies' and children's schmaschen of said length or under, one dollar and seventy-five cents per dozen; ladies' and children's lamb of said length or under, two dollars and twenty-five cents per dozen; ladies' and children's kid of said length or under, three dollars and twenty-five cents per dozen; ladies' and children's suedes of said length or under, fifty per centum ad valorem; all other ladies' and children's leather gloves, and all men's leather gloves of said length or under, fifty per centum ad valorem; all leather gloves over fourteen inches in length, fifty per centum ad valorem; and in addition to the above rates there shall be paid on all men's gloves one dollar per dozen; on all lined gloves one dollar per dozen; on all pique or prick seam gloves, fifty cents per dozen; on all embroidered gloves, with more than three single strands or cords, fifty cents per dozen pairs. *Provided*, That all gloves represented to be of a kind or grade below their actual kind or grade shall pay an additional duty of five dollars per dozen pairs: *Provided further*, That none of the articles named in this paragraph shall pay a less rate of duty than fifty per centum ad valorem.

MISCELLANEOUS MANUFACTURES.—

459. Manufactures of alabaster, amber, asbestos, bladders, coral, cat-gut or whip-gut or worm-gut, jet, paste, spar, wax, or of which these substances or either of them is the component material of chief value, not specially provided for in this act, twenty-five per centum ad valorem; osier or willow prepared for basket-makers' use, thirty per centum ad valorem; manufactures of osier or willow, forty per centum ad valorem.
460. Manufactures of bone, chip, grass, horn, India-rubber, palm-leaf, straw, weeds, or whalebone, or of which these substances or either of them is the component material of chief value, not specially provided for in this act, thirty per centum ad valorem.
461. Manufactures of leather, fur, gutta-percha, vulcanized India rubber, known as hard rubber, human hair, papier-mache, indurated fiber wares and other manufactures composed of wood or other pulp, or of which these substances or either of them is the component material of chief value, all of the above not specially provided for in this act, thirty-five per centum ad valorem.

462. Manufactures of ivory, vegetable ivory, mother-of-pearl, and shell, or of which these substances or either of them is the component material of chief value, not specially provided for in this act, forty per centum ad valorem.

463. Masks, composed of paper or pulp, thirty-five per centum ad valorem.

464. Matting made of cocoa-fiber or rattan, twelve cents per square yard; mats made of cocoa-fiber or rattan, eight cents per square foot.

465. Paintings, in oil or water colors, and statuary, not otherwise provided for in this act, fifteen per centum ad valorem; but the term "statuary" as herein used shall be understood to include only such statuary as is cut, carved, or otherwise wrought by hand from a solid block or mass of marble, stone, or alabaster, or from metal, and as is the professional production of a statuary or sculptor only.

466. Pencils of wood filled with lead or other material, and pencils of lead, fifty cents per gross and thirty per centum ad valorem; slate pencils, four cents per gross.

467. Pencil-leads not in wood, ten per centum ad valorem.

PIPES AND SMOKERS' ARTICLES.

468. Pipes, pipe-bowls, of all materials, and all smokers' articles whatsoever, not specially provided for in this act, including cigarette-books, cigarette book-covers, pouches for smoking or chewing tobacco, and cigarette-paper in all forms, seventy per centum ad valorem; all common tobacco pipes of clay, fifteen cents per gross.

469. Plush, black, known commercially as hatters' plush, composed of silk, or of silk and cotton, and used exclusively for making men's hats, ten per centum ad valorem.

470. Umbrellas, parasols, and sun-shades, covered with silk, or alpaca, fifty-five per centum ad valorem; if covered with other material, forty-five per centum ad valorem.

471. Umbrellas, parasols, and sunshades, sticks for, if plain, finished or unfinished, thirty-five per centum ad valorem; if carved, fifty per centum ad valorem.

472. Waste, not specially provided for in this act, ten per centum ad valorem.

FREE LIST.

SEC. 2. On and after the sixth day of October, eighteen hundred and ninety, unless otherwise specially provided for in this act, the following articles when imported shall be exempt from duty:

473. Acids used for medicinal, chemical, or manufacturing purposes, not specially provided for in this act.

474. Aconite.

475. Acorns, raw, dried or undried, but unground.

476. Agates, unmanufactured.

477. Albumen.

478. Alizarine, natural or artificial, and dyes commercially known as Alizarine yellow, Alizarine orange, Alizarine green, Alizarine blue, Alizarine brown, Alizarine black.

479. Amber, unmanufactured, or crude gum.

480. Ambergris.

481. Aniline salts.

482. Any animal imported specially for breeding purposes shall be admitted free: *Provided*, That no such animal shall be admitted free unless pure bred of a recognized breed, and duly registered in the book of record established for that breed: *And provided further*, That certificate of such record and of the pedigree of such animal shall be produced and submitted to the customs officer, duly authenticated by the proper custodian of such book of record, together with the affidavit of the owner, agent, or importer that such animal is the identical animal described in said certificate of record and pedigree. The Secretary of the Treasury may prescribe such additional regulations as may be required for the strict enforcement of this provision.

483. Animals brought into the United States temporarily for a period not exceeding six months, for the purpose of exhibition or competition for prizes offered by any agricultural or racing association; but a bond shall be given in accordance with regulations prescribed by the Secretary of the Treasury; also, teams of animals, including their harness and tackle and the wagons or other vehicles actually owned by persons emigrating from foreign countries to the United States with their families, and in actual use for the purpose of such emigration under such regulations as the Secretary of the Treasury may prescribe; and wild animals intended for exhibition in zoological collections for scientific and educational purposes, and not for sale or profit.

484. Annatto, roucou, rocoa, or orleans, and all extracts of.

485. Antimony ore, crude sulphite of.

486. Apatite.

487. Argal, or argol, or crude tartar.

488. Arrow root, raw or unmanufactured.
489. Arsenic and sulphide of, or orpiment.
490. Arseniate of aniline.
491. Art educational slops, composed of glass and metal and valued at not more than six cents per gross.
492. Articles in a crude state used in dyeing or tanning not specially provided for in this act.
493. Articles the growth, produce, and manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; casks, barrels, carboys, bags, and other vessels of American manufacture exported filled with American products, or exported empty and returned filled with foreign products, including shooks when returned as barrels or boxes; also quicksilver flasks or bottles, of either domestic or foreign manufacture, which shall have been actually exported from the United States; but proof of the identity of such articles shall be made, under general regulations to be prescribed by the Secretary of the Treasury; and if any such articles are subject to internal tax at the time of exportation such tax shall be proved to have been paid before exportation and not refunded: *Provided*, That this paragraph shall not apply to any article upon which an allowance of drawback has been made, the re-importation of which is hereby prohibited except upon payment of duties equal to the drawbacks allowed; or to any article manufactured in bonded-warehouse and exported under any provision of law: *And provided further*, That when manufactured tobacco which has been exported without payment of internal-revenue tax shall be re-imported it shall be retained in the custody of the collector of customs until the internal-revenue stamps in payment of the legal duties shall be placed thereon.
494. Asbestos, unmanufactured.
495. Ashes, wood and lye of, and beet-root ashes.
496. Asphaltum and bitumen, crude.
497. Asafetida.
498. Balm of Gilead.
499. Barks, cinchona or other from which quinine may be extracted.
500. Baryta, carbonate of, or witherite.
501. Bauxite, or beauxite.
502. Beeswax.
503. Bells, broken, and bell metal broken and fit only to be remanufactured.
504. Birds, stuffed, not suitable for millinery ornaments, and bird skins, prepared for preservation, but not further advanced in manufacture.
505. Birds and land and water fowls.
506. Bismuth.
507. Bladders, including fish-bladders or fish-sounds, crude, and all integuments of animals not specially provided for in this act.
508. Blood, dried.
509. Bologna sausages.
510. Bolting-cloths, especially for milling purposes, but not suitable for the manufacture of wearing apparel.
511. Bones, crude, or not burned, calcined, ground, steamed, or otherwise manufactured, and bone-dust or animal carbon, and bone ash, fit only for fertilizing purposes.
512. Books, engravings, photographs, bound or unbound etchings, maps, and charts, which shall have been printed and bound or manufactured more than twenty years at the date of importation.
513. Books and pamphlets printed exclusively in languages other than English; also books and music, in raised print, used exclusively by the blind.
514. Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority or for the use of the United States or for the use of the Library of Congress.
515. Books, maps, lithographic prints, and charts, specially imported, not more than two copies in any one invoice, in good faith, for the use of any society incorporated or established for educational, philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, subject to such regulations as the Secretary of the Treasury shall prescribe.
516. Books, or libraries, or parts of libraries, and other household effects of persons or families from foreign countries, if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale.
517. Brazil paste.
518. Braids, plaits, laces, and similar manufactures composed of straw, chip, grass, palm-leaf, willow, osier, or rattan, suitable for making or ornamenting hats, bonnets, and hoods.

519. Brazilian pebble, unwrought or unmanufactured.
520. Breccia, in block or slabs.
521. Bromine.
522. Bullion, gold or silver.
523. Burgundy pitch.
524. Cabinets of old coins and medals, and other collections of antiquities, but the term "antiquities" as used in this act shall include only such articles as are suitable for souvenirs or cabinet collections, and which shall have been produced at any period prior to the year seventeen hundred.
525. Cadmium.
526. Calamine.
527. Camphor, crude.
528. Castor or castoreum.
529. Catgut, whip-gut, or worm-gut, unmanufactured, or not further manufactured than in strings or cords.
530. Cerium.
531. Chalk, unmanufactured.
532. Charcoal.
533 Chicory-root, raw, dried, or undried, but unground.
534 Civet, crude.
535 Clay—Common blue clay in casks suitable for the manufacture of crucibles.
536. Coal, anthracite.
537. Coal stores of American vessels; but none shall be unloaded.
538. Coal-tar, crude.
539. Cobalt and cobalt-ore.
540 Cocculus indicus.
541. Cochineal.
542. Cocoa, or cacao, crude, and fiber, leaves, and shells of.
543. Coffee.
544. Coins, gold, silver, and copper.
545 Coir and coir yarn.
546. Copper, old, taken from the bottom of American vessels compelled by marine disaster to repair in foreign ports.
547. Coral, marine, uncut, and unmanufactured.
548. Cork-wood, or cork-bark, unmanufactured.
549. Cotton, and cotton-waste or flocks.
550. Cryolite, or kryolith.
551. Cudbear.
552. Curling-stones, or quoits, and curling-stone handles.
553. Curry, and curry-powder.
554. Cutch.
555. Cuttle-fish bone.
556. Dandelion roots, raw, dried, or undried, but unground.
557. Diamonds and other precious stones, rough or uncut, including glaziers' and engravers' diamonds not set, and diamond dust or bort, and jewels to be used in the manufacture of watches.
558. Divi-divi.
559. Dragon's blood.
560. Drugs, such as barks, beans, berries, balsams, buds, bulbs, and bulbous roots, excrescences such as nut-galls, fruits, flowers, dried fibers, and dried insects, grains, gums, and gum resin, herbs, leaves, lichens, mosses, nuts, roots, and stems, spices, vegetables, seeds aromatic, and seeds of morbid growth, weeds, and woods used expressly for dyeing; any of the foregoing which are not edible and are in a crude state, and not advanced in value or condition by refining or grinding, or by other process of manufacture, and not specially provided for in this act.
561. Eggs of birds, fish, and insects.
562. Emery ore.
563. Ergot.
564. Fans, common palm-leaf and palm-leaf unmanufactured.
565. Farina.
566. Fashion-plates, engraved on steel or copper or on wood, colored or plain.
567. Feathers and downs for beds.
568. Feldspar.
569. Felt, adhesive, for sheathing vessels.
570. Fibrin, in all forms.
571. Fish, the product of American fisheries, and fresh or frozen fish (except salmon) caught in fresh waters by American vessels, or with nets or other devices owned by citizens of the United States.
572. Fish for bait.
573. Fish skins.

574. Flint, flints, and ground flint stones.
575. Floor matting manufactured from round or split straw, including what is commonly known as Chinese matting.
576. Fossils.
577. Fruit-plants, tropical and semi-tropical, for the purpose of propagation or cultivation.

FRUITS AND NUTS—

578. Currants, Zante or other.
579. Dates.
580. Fruits, green, ripe, or dried, not specially provided for in this act.
581. Tamarinds.
582. Cocoa nuts.
583. Brazil nuts.
584. Cream nuts.
585. Palm nuts.
586. Palm-nut kernels.
587. Furs, undressed.
588. Fur-skins of all kinds not dressed in any manner.
589. Gambier.
590. Glass, broken, and old glass, which can not be cut for use, and fit only to be remanufactured.
591. Glass plates or disks, rough cut or unwrought, for use in the manufacture of optical instruments, spectacles, and eye-glasses, and suitable only for such use: *Provided, however*, That such disks exceeding eight inches in diameter may be polished sufficiently to enable the character of the glass to be determined.

GRASSES AND FIBERS—

592. Istle or Tampico fiber.
593. Jute.
594. Jute butts.
595. Manilla.
596. Sisal-grass.
597. Sunn.

And all other textile grasses or fibrous vegetable substances, unmanufactured or undressed, not specially provided for in this act.

598. Gold beaters' molds and gold beaters' skins.
599. Grease, and oils, such as are commonly used in soap-making or in wire-drawing, or for stuffing or dressing leather and which are fit only for such uses, not specially provided for in this act.
600. Guano, manures, and all substances expressly used for manure.
601. Gunny bags and gunny cloths, old or refuse, fit only for remanufacture.
602. Guts, salted.
603. Gutta percha, crude.
604. Hair of horse, cattle, and other animals, cleaned or uncleaned, drawn or undrawn, but unmanufactured, not specially provided for in this act; and human hair, raw, uncleaned, and not drawn.
605. Hides, raw or uncured, whether dry, salted, or pickled, Angora goat-skins, raw, without the wool, unmanufactured, asses' skins, raw or unmanufactured, and skins, except skeep-skins with the wool on.
606. Hide-cuttings, raw, with or without hair, and all other glue-stock.
607. Hide rope.
608. Hones and whetstones.
609. Hoofs, unmanufactured.
610. Hop roots for cultivation.
611. Horns and parts of, unmanufactured, including horn strips and tips.
612. Ice.
613. India rubber, crude, and milk of, and old scrap or refuse India rubber which has been worn out by use and is fit only for remanufacture.
614. Indigo.
615. Iodine, crude.
616. Ipecac.
617. Iridium.
618. Ivory and vegetable ivory, not sawed, cut or otherwise manufactured.
619. Jalap.
620. Jet, unmanufactured.
621. Joss-stick, or Joss-light.
622. Junk, old.
623. Kelp.
624. Kieserite.
625. Kyanite, or cyanite, and kainite.
626. Lac-dye, crude, seed, button, stick, and shell.

627. Lac spirits.
628. Lactarine.
629. Lava, unmanufactured.
630. Leeches.
631. Lemon juice, lime juice, and sour-orange juice.
632. Licorice-root, unground.
633. Life-boats and life-saving apparatus specially imported by societies incorporated or established to encourage the saving of human life.
634. Lime, citrate of.
635. Lime, chloride of, or bleaching-powder.
636. Lithographic stones not engraved.
637. Litmus, prepared or not prepared.
638. Loadstones.
639. Madder and munjeet, or Indian madder, ground or prepared, and all extracts of.
640. Magnesite, or native mineral carbonate of magnesia.
641. Magnesium.
642. Magnets.
643. Manganese, oxide and ore of.
644. Manna.
645. Manuscripts.
646. Marrow, crude.
647. Marsh mallows.
648. Medals of gold, silver, or copper, such as trophies or prizes.
649. Meerschaum, crude or unmanufactured.
650. Mineral waters, all not artificial.
651. Minerals, crude, or not advanced in value or condition by refining or grinding, or by other process of manufacture, not specially provided for in this act.
652. Models of inventions and of other improvements in the arts, including patterns for machinery, but no article shall be deemed a model or pattern which can be fitted for use otherwise.
653. Moss, sea-weeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this act.
654. Musk, crude, in natural pods.
655. Myrobolan.
656. Needles, hand-sewing, and darning.
657. Newspapers and periodicals; but the term "periodicals" as herein used shall be understood to embrace only unbound or paper-covered publications, containing current literature of the day and issued regularly at stated periods, as weekly, monthly, or quarterly.
658. Nux vomica.
659. Oakum.
660. Oil cake.
661. OILS: Almond, amber, crude and rectified ambergris, anise or anise-seed, aniline, aspic or spike lavender, bergamot, cajeput, caraway, cassia, cinnamon, cedrat, chamomile, citronella or lemon grass, civet, fennel, Jasmine or Jasimine, Juglandium, Juniper, lavender, lemon, limes, mace, neroli or orange flower, nut oil or oil of nuts not otherwise specially provided for in this act, orange oil, olive oil for manufacturing or mechanical purposes unfit for eating and not otherwise provided for in this act, ottar of roses, palm and cocoa-nut, rosemary or anthoss, sesame or sesamum-seed or bean, thyme, origanum red or white, valerian; and also spermaceti, whale, and other fish oils of American fisheries, and all other articles the produce of such fisheries.
662. Olives, green or prepared.
663. Opium, crude or unmanufactured, and not adulterated, containing nine per centum and over of morphia.
664. Orange and lemon peel, not preserved, candied, or otherwise prepared.
665. Orchil, or orchil liquid.
666. Orchids, lily of the valley, azaleas, palms, and other plants used for forcing under glass for cut flowers or decorative purposes.
667. Ores, of gold, silver, and nickel, and nickel matte: *Provided*, That ores of nickel, and nickel matte, containing more than two per centum of copper, shall pay a duty of one-half of one cent per pound on the copper contained therein.
668. Osmium.
669. Palladium.
670. Paper stock, crude, of every description, including all grasses, fibers, rags (other than wool), waste, shavings, clippings, old paper, rope ends, waste rope, waste bagging, old or refuse gunny bags or gunny cloth, and poplar or other woods, fit only to be converted into paper.
671. Paraffine.
672. Parchment and vellum.
673. Pearl, mother of, not sawed, cut, polished, or otherwise manufactured.

674. Peltries and other usual goods and effects of Indians passing or repassing the boundary line of the United States, under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That this exemption shall not apply to goods in bales or other packages unusual among Indians.

675. Personal and household effects not merchandise of citizens of the United States dying in foreign countries.

676. Pewter and britannia metal, old, and fit only to be re-manufactured.

677. Philosophical and scientific apparatus, instruments and preparations; statuary, casts of marble, bronze, alabaster, or plaster of Paris; paintings, drawings, and etchings, specially imported in good faith for the use of any society or institution incorporated or established for religious, philosophical, educational, scientific, or literary purposes, or for encouragement of the fine arts, and not intended for sale.

678. Phosphates, crude or native.

679. Plants, trees, shrubs, roots, seed-cane, and seeds, all of the foregoing imported by the Department of Agriculture or the United States Botanic Garden.

680. Plaster of Paris and sulphate of lime, unground.

681. Platina, in ingots, bars, sheets, and wire.

682. Platinum, unmanufactured, and vases, retorts, and other apparatus, vessels, and parts thereof composed of platinum, for chemical uses.

683. Plumbago.

684. Polishing-stones.

685. Potash, crude, carbonate of, or "black salts." Caustic potash, or hydrate of, not including refined in sticks or roll. Nitrate of potash, or saltpeter, crude. Sulphate of potash, crude or refined. Chlorate of potash. Muriate of potash.

686. Professional books, implements, instruments, and tools of trade, occupation, or employment, in the actual possession at the time of persons arriving in the United States; but this exemption shall not be construed to include machinery or other articles imported for use in any manufacturing establishment, or for any other person or persons, or for sale.

687. Pulu.

688. Pumice.

689. Quills, prepared or unprepared, but not made up into complete articles.

690. Quinia, sulphate of, and all alkaloids or salts of cinchona-bark.

691. Rags, not otherwise specially provided for in this act.

692. Regalia and gems, statues, statuary and specimens of sculpture where specially imported in good faith for the use of any society incorporated or established solely for educational, philosophical, literary, or religious purposes, or for the encouragement of fine arts, or for the use or by order of any college, academy, school, seminary of learning, or public library in the United States; but the term "regalia" as herein used shall be held to embrace only such insignia of rank or office or emblems, as may be worn upon the person or borne in the hand durang public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing-apparel, not personal property of individuals.

693. Rennets, raw or prepared.

694. Saffron and safflower, and extract of, and saffron cake.

695. Sago, crude, and sago flour.

696. Salacine.

697. Sauer-krout.

698. Sausage skins.

699. Seeds: anise, canary, caraway, cardamon, coriander, cotton, cummin, fennel, fenugreek, hemp, hoarhound, mustard, rape, Saint John's bread or bene, sugar-beet, mangel-wurzel, sorghum or sugar cane for seed, and all flower and grass seeds; bulbs and bulbous roots, not edible; all the foregoing not specially provided for in this act.

700. Selep, or saloup.

701. Shells of all kinds, not cut, ground, or otherwise manufactured.

702. Shotgun barrels, forged, rough bored.

703. Shrimps and other shell fish.

704. Silk, raw, or as reeled from the cocoon, but not doubled, twisted, or advanced in manufacture in any way.

705. Silk cocoons and silk-waste.

706. Silk worm's eggs.

707. Skeletons and other preparations of anatomy.

708. Snails.

709. Soda, nitrate of, or cubic nitrate, and chlorate of.

710. Sodium.

711. Sparterre, suitable for making or ornamenting hats.

712. Specimens of natural history, botany, and mineralogy, when imported for cabinets or as objects of science, and not for sale.

SPICES—

713. Cassia, cassia vera, and cassia buds, unground.

714. Cinnamon, and chips of, unground.
715. Cloves and clove stems, unground.
716. Ginger-root, unground and not preserved or candied.
717. Mace.
718. Nutmegs.
719. Pepper, black or white, unground.
720. Pimento, unground.
721. Spunk.
722. Spurs and stilts used in the manufacture of earthen, porcelain, and stone ware.
723. Stone and sand: Burr-stone in blocks, rough or manufactured, and not bound up into mill-stones; cliff-stone, unmanufactured, pumice-stone, rotten-stone, and sand, crude or manufactured.
724. Storax, or styrax.
725. Strontia, oxide of, and protoxide of strontian, and strontianite, or mineral carbonate of strontia.
726. Sugars, all not above number sixteen Dutch standard in color, all tank bottoms, all sugar drainings and sugar sweepings, sirups of cane juice, melada, concentrated melada, and concrete and concentrated molasses, and molasses.
727. Sulphur, lac or precipitated, and sulphur or brimstone, crude, in bulk, sulphur ore, as pyrites, or sulphuret of iron in its natural state, containing in excess of twenty-five per centum of sulphur (except on the copper contained therein) and sulphur not otherwise provided for.
728. Sulphuric acid which at the temperature of sixty degrees Fahrenheit does not exceed the specific gravity of one and three hundred and eighty thousandths, for use in manufacturing superphosphate of lime or artificial manures of any kind, or for any agricultural purposes.
729. Sweepings of silver and gold.
730. Tapioca, cassava or cassady.
731. Tar and pitch of wood, and pitch of coal-tar.
732. Tea and tea-plants.
733. Teeth, natural, or unmanufactured.
734. Terra alba.
735. Terra japonica.
736. Tin ore, cassiterite or black oxide of tin, and tin in bars, blocks, pigs, or grain or granulated, until July the first, eighteen hundred and ninety-three, and thereafter as otherwise provided for in this act.
737. Tinsel wire, lame, or lahn.
738. Tobacco stems.
739. Tonquin, tonqua, or tonka beans.
740. Tripoli.
741. Turmeric.
742. Turpentine, Venice.
743. Turpentine, spirits of.
744. Turtles.
745. Types, old, and fit only to be remanufactured.
746. Uranium, oxide and salts of.
747. Vaccine virus.
748. Valonia.
749. Verdigris, or subacetate of copper.
750. Wafers, unmedicated.
751. Wax, vegetable or mineral.
752. Wearing apparel and other personal effects (not merchandise) of persons arriving in the United States, but this exemption shall not be held to include articles not actually in use and necessary and appropriate for the use of such persons for the purposes of their journey and present comfort and convenience, or which are intended for any other person or persons, or for sale: *Provided, however*, That all such wearing apparel and other personal effects as may have been once imported into the United States and subjected to the payment of duty, and which may have been actually used and taken or exported to foreign countries by the persons returning therewith to the United States, shall, if not advanced in value or improved in condition by any means since their exportation from the United States, be entitled to exemption from duty, upon their identity being established, under such rules and regulations as may be prescribed by the Secretary of the Treasury.
753. Whalebone, unmanufactured.
754. WOOD.—Logs, and round unmanufactured timber not specially enumerated or provided for in this act.
755. Fire wood, handle-bolts, heading-bolts, stave-bolts, and shingle-bolts, hop-poles, fence-posts, railroad ties, ship timber, and ship-planking, not specially provided for in this act.

756. Woods, namely, cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all forms of cabinet-woods, in the log, rough or hewn; bamboo and rattan unmanufactured; briar-root or briar-wood, and similar wood unmanufactured, or not further manufactured than cut into blocks suitable for the articles into which they are intended to be converted; bamboo, reeds, and sticks of partridge, hair-wood, pimento, orange, myrtle, and other woods not otherwise specially provided for in this act, in the rough, or not further manufactured than cut into lengths suitable for sticks for umbrellas, parasols, sun-shades, whips, or walking canes; and India malacca joints, not further manufactured than cut into suitable lengths for the manufactures into which they are intended to be converted.

757. Works of art, the production of American artists residing temporarily abroad, or other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution, or to any State or municipal corporation, or incorporated religious society, college, or other public institution, except stained or painted window-glass or stained or painted glass windows: but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe.

758. Works of art, drawings, engravings, photographic pictures, and philosophical and scientific apparatus brought by professional artists, lecturers, or scientists arriving from abroad for use by them temporarily for exhibition and in illustration, promotion, and encouragement of art, science, or industry in the United States, and not for sale, and photographic pictures, paintings, and statuary, imported for exhibition by any association established in good faith and duly authorized under the laws of the United States, or of any State, expressly and solely for the promotion and encouragement of science, art, or industry, and not intended for sale, shall be admitted free of duty, under such regulations as the Secretary of the Treasury shall prescribe; but bonds shall be given for the payment to the United States of such duties as may be imposed by law upon any and all of such articles as shall not be exported within six months after such importation: *Provided*, That the Secretary of the Treasury may, in his discretion, extend such period for a further term of six months in cases where applications therefor shall be made.

759. Works of art, collections in illustration of the progress of the arts, science, or manufactures, photographs, works in terra-cotta, parian, pottery, or porcelain, and artistic copies of antiquities in metal or other material hereafter imported in good faith for permanent exhibition at a fixed place by any society or institution established for the encouragement of the arts or of science, and all like articles imported in good faith by any society or association for the purpose of erecting a public monument, and not intended for sale, nor for any other purpose than herein expressed; but bonds shall be given under such rules and regulations as the Secretary of the Treasury may prescribe, for the payment of lawful duties which may accrue should any of the articles aforesaid be sold, transferred, or used contrary to this provision, and such articles shall be subject, at any time, to examination and inspection by the proper officers of the customs: *Provided*, That the privileges of this and the preceding section shall not be allowed to associations or corporations engaged in or connected with business of a private or commercial character.

760. Yams.

761. Zaffer.

SEC. 3. That with a view to secure reciprocal trade with countries producing the following articles, and for this purpose, on and after the first day of January, eighteen hundred and ninety two, whenever, and so often as the President shall be satisfied that the Government of any country producing and exporting sugars, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he may deem just, and in such case and during such suspension duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country as follows, namely:

All sugars not above number thirteen Dutch standard in color shall pay duty on their polariscopic tests as follows, namely:

All sugars not above number thirteen Dutch standard in color, all tank bottoms, sirups of cane juice or of beet juice, melada, concentrated melada, concrete and concentrated molasses, testing by the polariscope not above seventy-five degrees, seven-tenths of one cent per pound; and for every additional degree or fraction of a degree shown by the polariscopic test, two hundredths of one cent per pound additional.

All sugars above number thirteen Dutch standard in color shall be classified by the Dutch standard of color, and pay duty as follows, namely: All sugar above number

thirteen and not above number sixteen Dutch standard of color, one and three-eighths cents per pound.

All sugar above number sixteen and not above number twenty Dutch standard of color, one and five-eighths cents per pound.

All sugars above number twenty Dutch standard of color, two cents per pound.

Molasses testing above fifty-six degrees, four cents per gallon.

Sugar drainings and sugar sweepings shall be subject to duty either as molasses or sugar, as the case may be, according to polariscopic test.

On coffee, three cents per pound.

On tea, ten cents per pound.

Hides, raw or uncured, whether dry, salted, or pickled, Angora goat-skins, raw, without the wool, unmanufactured, asses' skins, raw or unmanufactured, and skins, except sheep-skins, with the wool on, one and one-half cents per pound.

SEC. 4. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this act, a duty of ten per centum ad valorem; and on all articles manufactured, in whole or in part, not provided for in this act, a duty of twenty per centum ad valorem.

SEC. 5. That each and every imported article, not enumerated in this act, which is similar, either in material, quality, texture, or the use to which it may be applied, to any article enumerated in this act as chargeable with duty shall pay the same rate of duty which is levied on the enumerated article which it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable there shall be levied on such non-enumerated article the same rate of duty as is chargeable on the article which it resembles paying the highest rate of duty; and on articles not enumerated, manufactured of two or more materials, the duty shall be assessed at the highest rate at which the same would be chargeable if composed wholly of the component material thereof of chief value; and the words "component material of chief value," wherever used in this act, shall be held to mean that component material which shall exceed in value any other single component material of the article; and the value of each component material shall be determined by the ascertained value of such material in its condition as found in the article. If two or more rates of duty shall be applicable to any imported article it shall pay duty at the highest of such rates.

SEC. 6. That on and after the first day of March, eighteen hundred and ninety-one, all articles of foreign manufacture, such as are usually or ordinarily marked, stamped, branded, or labeled, and all packages containing such or other imported articles, shall, respectively, be plainly marked, stamped, branded, or labeled in legible English words, so as to indicate the country of their origin; and unless so marked, stamped, branded, or labeled they shall not be admitted to entry.

SEC. 7. That on and after March first, eighteen hundred and ninety-one, no article of imported merchandise which shall copy or simulate the name or trade-mark of any domestic manufacture or manufacturer, shall be admitted to entry at any custom-house of the United States. And in order to aid the officers of the customs in enforcing this prohibition any domestic manufacturer who has adopted trade-marks may require his name and residence and a description of his trade-marks to be recorded in books which shall be kept for that purpose in the Department of the Treasury under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department fac-similes of such trade-marks; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of the customs.

SEC. 8. That all lumber, timber, hemp, manilla, wire rope, and iron and steel rods, bars, spikes, nails, plates, tees, angles, beams, and bolts and copper and composition metal which may be necessary for the construction and equipment of vessels built in the United States for foreign account and ownership or for the purpose of being employed in the foreign trade, including the trade between the Atlantic and Pacific ports of the United States, after the passage of this act, may be imported in bond, under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for such purpose no duties shall be paid thereon. But vessels receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than two months in any one year, except upon the payment to the United States of the duties on which a rebate is herein allowed: *Provided*, That vessels built in the United States for foreign account and ownership shall not be allowed to engage in the coastwise trade of the United States.

SEC. 9. That all articles of foreign production needed for the repair of American vessels engaged in foreign trade, including the trade between the Atlantic and Pacific ports of the United States, may be withdrawn from bonded-warehouses free of duty, under such regulations as the Secretary of the Treasury may prescribe.

SEC. 10. That all medicines, preparations, compositions, perfumery, cosmetics, cor-

dials, and other liquors manufactured wholly or in part of domestic spirits, intended for exportation, as provided by law, in order to be manufactured and sold or removed, without being charged with duty and without having a stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, be made and manufactured in warehouses similarly constructed to those known and designated in Treasury regulations as bonded-warehouses, class two: *Provided*, That such manufacturer shall first give satisfactory bonds to the collector of internal revenue for the faithful observance of all the provisions of law and the regulations as aforesaid, in amount not less than half of that required by the regulations of the Secretary of the Treasury from persons allowed bonded-warehouses. Such goods, when manufactured in such warehouses, may be removed for exportation under the direction of the proper officer having charge thereof, who shall be designated by the Secretary of the Treasury without being charged with duty, and without having a stamp affixed thereto. Any manufacturer of the articles aforesaid, or any of them, having such bonded warehouse as aforesaid, shall be at liberty, under such regulations as the Secretary of the Treasury may prescribe, to convey therein any materials to be used in such manufacture which are allowed by the provisions of law to be exported free from tax or duty, as well as the necessary materials, implements, packages, vessels, brands, and labels for the preparation, putting up, and export of the said manufactured articles; and every article so used shall be exempt from the payment of stamp and excise duty by such manufacturer. Articles and materials so to be used may be transferred from any bonded-warehouse in which the same may be, under such regulations as the Secretary of the Treasury may prescribe, into any bonded-warehouse in which such manufacture may be conducted, and may be used in such manufacture, and when so used shall be exempt from stamp and excise duty; and the receipt of the officer in charge as aforesaid shall be received as a voucher for the manufacture of such articles. Any materials imported into the United States may, under such rules as the Secretary of the Treasury may prescribe, and under the direction of the proper officer, be removed in original packages from on ship-board, or from the bonded-warehouse in which the same may be, into the bonded-warehouse in which such manufacture may be carried on, for the purpose of being used in such manufacture, without payment of duties thereon, and may there be used in such manufacture. No article so removed, nor any article manufactured in said bonded-warehouse, shall be taken therefrom except for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their mark or otherwise, the quantity, the date of importation, and name of vessel, with such additional particulars as may from time to time be required, shall be received by the collector of customs in cancellation of the bond or return of the amount of foreign import duties. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, and at the expense of the manufacturer.

SEC. 11. All persons are prohibited from importing into the United States from any foreign country any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles shall be proceeded against, seized, and forfeited by due course of law. All such prohibited articles and the package in which they are contained in the course of importation shall be detained by the officer of customs, and proceedings taken against the same as prescribed in the following section, unless it appears to the satisfaction of the collector of customs that the obscene articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this section.

SEC. 12. That whoever, being an officer, agent, or employee of the Government of the United States, shall knowingly aid or abet any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be deemed guilty of a misdemeanor, and shall for every offense be punishable by a fine of not more than five thousand dollars, or by imprisonment at hard labor for not more than ten years, or both.

SEC. 13. That any judge of any district or circuit court of the United States, within the proper district, before whom complaint in writing of any violation of the two preceding sections is made, to the satisfaction of such judge, and founded on knowledge or belief, and if upon belief, setting forth the grounds of such belief, and supported by oath or affirmation of the complainant may issue, conformably to the Constitu-

tion, a warrant directed to the marshal or any deputy marshal, in the proper district, directing him to search for, seize, and take possession of any such article or thing mentioned in the two preceding sections, and to make due and immediate return thereof to the end that the same may be condemned and destroyed by proceedings, which shall be conducted in the same manner as other proceedings in the case of municipal seizure, and with the same right of appeal or writ of error.

SEC. 14. That machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof, to be withdrawn and exported after said machinery shall have been repaired; and the Secretary of the Treasury is authorized and directed to prescribe such rules and regulations as may be necessary to protect the revenue against fraud, and secure the identity and character of all such importations when again withdrawn and exported, restricting and limiting the export and withdrawal to the same port of entry where imported, and also limiting all bonds to a period of time of not more than six months from the date of the importation.

SEC. 15. That the produce of the forests of the State of Maine upon the Saint John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue to be so admitted under such regulations as the Secretary of the Treasury shall, from time to time, prescribe.

SEC. 16. That the produce of the forests of the State of Maine upon the Saint Croix River and its tributaries owned by American citizens, and sawed in the Province of New Brunswick by American citizens, the same being unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall, from time to time, prescribe.

SEC. 17. That a discriminating duty of ten per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States; but this discriminating duty shall not apply to goods, wares, and merchandise which shall be imported in vessels not of the United States, entitled, by treaty or any act of Congress, to be entered in the ports of the United States on payment of the same duties as shall then be paid on goods, wares, and merchandise imported in vessels of the United States.

SEC. 18. That no goods, wares, or merchandise, unless in cases provided for by treaty, shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation. All goods, wares, or merchandise imported contrary to this section, and the vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship, or vessel, and cargo shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

SEC. 19. That the preceding section shall not apply to vessels or goods, wares, or merchandise imported in vessels of a foreign nation which does not maintain a similar regulation against vessels of the United States.

SEC. 20. That the importation of neat cattle and the hides of neat cattle from any foreign country into the United States is prohibited: *Provided*, That the operation of this section shall be suspended as to any foreign country or countries, or any parts of such country or countries, whenever the Secretary of the Treasury shall officially determine, and give public notice thereof that such importation will not tend to the introduction or spread of contagious or infectious diseases among the cattle of the United States; and the Secretary of the Treasury is hereby authorized and empowered, and it shall be his duty, to make all necessary orders and regulations to carry this section into effect, or to suspend the same as therein provided, and to send copies thereof to the proper officers in the United States, and to such officers or agents of the United States in foreign Countries as he shall judge necessary.

SEC. 21. That any person convicted of a willful violation of any of the provisions of the preceding section shall be fined not exceeding five hundred dollars, or imprisoned not exceeding one year, or both, in the discretion of the Court.

SEC. 22. That upon the reimportation of articles once exported of the growth, product, or manufacture of the United States, upon which no internal tax has been assessed or paid, or upon which such tax has been paid and refunded by allowance or drawback, there shall be levied, collected, and paid a duty equal to the tax imposed by the internal-revenue laws upon such articles, except articles manufactured

in bonded warehouses and exported pursuant to law, which shall be subject to the same rate of duty as if originally imported.

SEC. 23. That whenever any vessel laden with merchandise in whole or in part subject to duty has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years, and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised, free from the payment of any duty thereupon, and without being obliged to enter the same at the custom-house; but under such regulations as the Secretary of the Treasury may prescribe.

SEC. 24. That the works of manufactures engaged in smelting or refining metals in the United States may be designated as bonded-warehouses under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That such manufacturers shall first give satisfactory bonds to the Secretary of Treasury. Metals in any crude form requiring smelting or refining to make them readily available in the arts imported into the United States to be smelted or refined and intended to be exported in a refined but unmanufactured state, shall, under such rules as the Secretary of the Treasury may prescribe and under the direction of the proper officer, be removed in original packages or in bulk from the vessel or other vehicle on which it has been imported, or from the bonded-warehouse in which the same may be into the bonded-warehouse in which such smelting and refining may be carried on, for the purpose of being smelted and refined without payment of duties thereon, and may there be smelted and refined, together with other metals of home or foreign production: *Provided*, That each day a quantity of refined metal equal to the amount of imported metal refined that day shall be set aside, and such metal so set aside shall not be taken from said works except for exportation, under the direction of the proper officer having charge thereof as aforesaid, whose certificate, describing the articles by their marks or otherwise, the quantity, the date of importation, and the name of vessel or other vehicle by which it was imported, with such additional particulars as may from time to time be required, shall be received by the collector of customs as sufficient evidence of the exportation of the metal, or it may be removed, under such regulations as the Secretary of the Treasury may prescribe, to any other bonded-warehouse, or upon entry for, and payment of duties, for domestic consumption. All labor performed and services rendered under these regulations shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury, and at the expense of the manufacturer.

SEC. 25. That where imported materials on which duties have been paid, are used in the manufacture of articles manufactured or produced in the United States, there shall be allowed on the exportation of such articles a drawback equal in amount to the duties paid on the materials used, less one per centum of such duties: *Provided*, That when the articles exported are made in part from domestic materials, the imported materials, or the parts of the articles made from such materials shall so appear in the completed articles that the quantity or measure thereof may be ascertained. *And provided further*, That the drawback on any article allowed under existing law shall be continued at the rate herein provided. That the imported materials used in the manufacture or production of articles entitled to drawback of customs duties when exported shall in all cases where drawback of duties paid on such materials is claimed, be identified, the quantity of such materials used and the amount of duties paid thereon shall be ascertained, the facts of the manufacture or production of such articles in the United States and their exportation therefrom shall be determined, and the drawback due thereon shall be paid to the manufacturer, producer, or exporter, to the agent of either or to the person to whom such manufacturer, producer, exporter or agent shall in writing order such drawback paid, under such regulations as the Secretary of the Treasury shall prescribe.

INTERNAL REVENUE.

SEC. 26. That on and after the first day of May, eighteen hundred and ninety-one, all special taxes imposed by the laws now in force upon dealers in leaf tobacco, retail dealers in leaf tobacco, dealers in tobacco, manufacturers of tobacco, manufacturers of cigars, and peddlers of tobacco are hereby repealed. Every such dealer in leaf tobacco, retail dealer in leaf tobacco, manufacturer, and peddler shall, however, register with the collector of the district his name, or style, place of residence, trade, or business, and the place where such trade or business is to be carried on, the same as though the tax had not been repealed, and a failure to register as herein required shall subject such person to a penalty of fifty dollars.

SEC. 27. That all provisions of the statutes imposing restrictions of any kind whatsoever upon farmers and growers of tobacco in regard to the sale of their leaf tobacco, and the keeping of books, and the registration and report of their sales of leaf tobacco, or imposing any tax on account of such sale, are hereby repealed: *Provided, however*, That it shall be the duty of every farmer or planter producing

and selling leaf-tobacco, on demand of any internal-revenue officer, or other authorized agent of the Treasury Department, to furnish said officer or agent a true and complete statement, verified by oath, of all his sales of leaf-tobacco, the number of hogsheads, cases, or pounds, with the name and residence, in each instance, of the person to whom sold, and the place to which it is shipped. And every farmer or planter who willfully refuses to furnish such information, or who knowingly makes false statements as to any of the facts aforesaid, shall be guilty of a misdemeanor, and shall be liable to a penalty not exceeding five hundred dollars.

SEC. 28. That section thirty-three hundred and eighty-one of the Revised Statutes, be, and the same is hereby, amended by striking out all after the said number and substituting therefor the following:

"Every peddler of tobacco, before commencing, or, if he has already commenced, before continuing to peddle tobacco, shall furnish to the collector of his district a statement accurately setting forth the place of his residence, and, if in a city the street and number of the street where he resides, the State or States through which he proposes to travel; also whether he proposes to sell his own manufactures or the manufactures of others, and, if he sells for other parties, the person for whom he sells. He shall also give a bond in the sum of five hundred dollars, to be approved by the collector of the district, conditioned that he shall not engage in any attempt, by himself or by collusion with others, to defraud the Government of any tax on tobacco, snuff, or cigars; that he shall neither sell nor offer for sale any tobacco, snuff, or cigars, except in original and full packages, as the law requires the same to be put up and prepared by the manufacturer for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff, and cigars as bear the manufacturer's label or caution notice, and his legal marks and brands, and genuine internal-revenue stamps which have never before been used."

SEC. 29. That section thirty-three hundred and thirty-three, Revised Statutes, as amended by section fifteen of the act of March first, eighteen hundred and seventy-nine, be, and the same is hereby, amended by striking out all of said section and by substituting in lieu thereof the following:

"Every peddler of tobacco shall obtain a certificate from the collector of his collection district, who is hereby authorized and directed to issue the same, giving the name of the peddler, his residence, and the fact of his having filed the required bond; and shall on demand of any officer of internal revenue produce and exhibit his certificate. And whenever any peddler refuses to exhibit his certificate, as aforesaid, on demand of any officer of internal revenue, said officer may seize the horse or mule, wagon, and contents, or pack, bundle, or basket, of any person so refusing; and the collector of the district in which the seizure occurs may, on ten days' notice, publish in any newspaper in the district, or serve personally on the peddler, or at his dwelling house, require such peddler to show cause, if any he has, why the horses or mules, wagons, and contents, pack, bundle, or basket so seized shall not be forfeited. In case no sufficient cause is shown, proceedings for the forfeiture of the property seized shall be taken under the general provisions of the internal-revenue laws relating to forfeitures. Any internal-revenue agent may demand production of and inspect the collector's certificate for peddlers, and refusal or failure to produce the same, when so demanded, shall subject the party guilty thereof to a fine of not more than five hundred dollars and to imprisonment for not more than twelve months."

SEC. 30. That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be six cents per pound, and on snuff six cents per pound.

SEC. 31. That section thirty-three hundred and sixty-three of the Revised Statutes, be, and hereby is, amended by striking out all after said number and substituting the following

"No manufactured tobacco shall be sold or offered for sale unless put up in packages and stamped as prescribed in this chapter, except at retail by retail dealers from packages authorized by section thirty-three hundred and sixty-two of the Revised Statutes; and every person who sells or offers for sale any snuff or any kind of manufactured tobacco not so put up in packages and stamped shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years.

SEC. 32. That section thirty-three hundred and ninety-two of the Revised Statutes, as amended by section sixteen of the act of March first, eighteen hundred and seventy-nine, be and the same hereby is amended to read as follows:

"All cigars shall be packed in boxes not before used for that purpose, containing respectively twenty-five, fifty, one hundred, two hundred, two hundred and fifty, or five hundred cigars each: *Provided, however*, That manufacturers of cigars shall be permitted to pack in boxes not before used for that purpose cigars not to exceed thirteen nor less than twelve in number, to be used as sample boxes; and every

person who sells, or offers for sale, or delivers, or offers to deliver, any cigars in any other form than in new boxes as above described, or who packs in any box any cigars in excess of or less than the number provided by law to be put in each box respectively, or who falsely brands any box, or affixes a stamp on any box denoting a less amount of tax than that required by law, shall be fined for each offense not more than one thousand dollars, and be imprisoned not more than two years: *Provided*, That nothing in this section shall be construed as preventing the sale of cigars at retail by retail dealers who have paid the special tax as such from boxes packed, stamped, and branded in the manner prescribed by law: *And provided further*, That every manufacturer of cigarettes shall put up all the cigarettes that he manufactures or has manufactured for him, and sells or removes for consumption or use, in packages or parcels containing ten, twenty, fifty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the tax thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe: and all cigarettes imported from a foreign country shall be packed, stamped, and the stamps canceled in like manner, in addition to the import stamp indicating inspection of the custom-house before they are withdrawn therefrom.

SEC. 33. That section thirty three hundred and fifty-seven, of the Revised Statutes, as amended by section two of the act of June ninth, eighteen hundred and eighty, be, and the same is amended, by striking out all after the number and inserting in lieu thereof the following:

"Every collector shall keep a record, in a book or books provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of tobacco or snuff in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer, a copy of every inventory required by law to be made by such manufacturer, and an abstract of his monthly returns; and he shall cause the several manufactories of tobacco or snuff in his district to be numbered consecutively, which numbers shall not be thereafter changed, except for reasons satisfactory to himself and approved by the Commissioner of Internal Revenue."

SEC. 34. That section thirty-three hundred and eighty-nine of the Revised Statutes, as amended by section sixteen of the act of March first, eighteen hundred and seventy-nine, be, and the same is hereby amended so as to read as follows:

"Every collector shall keep a record, in a book provided for that purpose, to be open to the inspection of only the proper officers of internal revenue, including deputy collectors and internal-revenue agents, of the name and residence of every person engaged in the manufacture of cigars in his district, the place where such manufacture is carried on, and the number of the manufactory; and he shall enter in said record, under the name of each manufacturer an abstract of his inventory and monthly returns; and he shall cause the several manufacturers of cigars in the district to be numbered consecutivly, which number shall not thereafter be changed."

SEC. 35. That section three thousand three hundred and eighty-seven of the Revised Statutes, as amended by section sixteen of the act of March first, one thousand eight hundred and seventy-nine, be, and the same is hereby, amended, by striking from the said section the following words, namely: "five hundred dollars, with an additional one hundred dollars for each person proposed to be employed by him in making cigars," and inserting in lieu of the words so stricken out the words: "one hundred dollars."

SEC. 36. That an internal-revenue tax of ten dollars per pound shall be levied and collected upon all opium manufactured in the United States for smoking purposes; and no person shall engage in such manufacture who is not a citizen of the United States and who has not given the bond required by the Commissioner of Internal Revenue.

SEC. 37. That every manufacturer of such opium shall file with the collector of internal revenue of the district in which his manufactory is located such notices, inventories, and bonds, shall keep such books and render such returns of material and products, shall put up such signs and affix such number to his factory, and conduct his business under such surveillance of officers and agents as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require. But the bond required of such manufacturer shall be with sureties satisfactory to the collector of internal revenue and in a penal sum of not less than five thousand dollars; and the sum of said bond may be increased from time to time and additional sureties required at the discretion of the collector or under instructions of the Commissioner of Internal Revenue.

SEC. 38. That all prepared smoking opium imported into the United States shall,

before removal from the custom-house, be duly stamped in such manner as to denote that the duty thereon has been paid; and that all opium manufactured in the United States for smoking purposes, before being removed from the place of manufacture, whether for consumption or storage, shall be duly stamped in such permanent manner as to denote the payment of the internal-revenue tax thereon.

SEC. 39. That the provisions of existing laws governing the engraving, issue, sale, accountability, effacement, cancellation, and destruction of stamps relating to tobacco and snuff, as far as applicable are hereby made to apply to stamps provided for by the preceding section.

SEC. 40. That a penalty of not more than one thousand dollars, or imprisonment not more than one year, or both, in the discretion of the court shall be imposed for each and every violation of the preceding sections of this act relating to opium by any person or persons; and all prepared smoking opium wherever found within the United States without stamps required by this act shall be forfeited.

SEC. 41. That wholesale dealers in oleomargarine shall keep such books and render such returns in relation thereto as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may, by regulation, require, and such books shall be open at all times to the inspection of any internal-revenue officer or agent.

SEC. 42. That any producer of pure sweet wines, who is also a distiller, authorized to separate from fermented grape-juice, under internal-revenue laws, wine spirits, may use, free of tax, in the preparation of such sweet wines, under such regulations and after the filing of such notices and bonds, together with the keeping of such records and the rendition of such reports as to materials and products, as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury may prescribe, so much of such wine spirits so separated by him as may be necessary to fortify the wine for the preservation of the saccharine matter contained therein: *Provided*, That the wine spirits so used free of tax shall not be in excess of the amount required to introduce into such sweet wines in alcoholic strength equal to fourteen per centum of the volume of such wines after such use: *Provided further*, That such wine containing after such fortification more than twenty-four per centum of alcohol, as defined by section thirty-two hundred and forty-nine of the Revised Statutes, shall be forfeited to the United States: *Provided further*, That such use of wine spirits free from tax shall be confined to the months of August, September, October, November, December, January, February, March, and April of each year. The Commissioner of Internal Revenue, in determining the liability of any distiller of fermented grape-juice to assessment under section thirty-three hundred and nine of the Revised Statutes, is authorized to allow such distiller credit in his computation for the wine spirits used by him in preparing sweet wine under the provisions of this section.

SEC. 43. That the wine-spirits mentioned in section fifty-three of this act is the product resulting from the distillation of fermented grape juice, and shall be held to include the product commonly known as grape brandy; and the pure sweet wine which may be fortified free of tax, as provided in said section, is fermented grape-juice only, and shall contain no other substance of any kind whatever introduced before, at the time of, or after fermentation, and such sweet wine shall contain not less than four per centum of saccharine matter, which saccharine strength may be determined by testing, with Balling's saccharometer or must-scale, such sweet-wine, after the evaporation of the spirit contained therein, and restoring the sample tested to original volume by addition of water.

SEC. 44. That any person who shall use wine spirits, as defined by section fifty-four of this act, or other spirits on which the internal-revenue tax has not been paid, otherwise than within the limitations set forth in section fifty-five of this act, and in accordance with the regulations made pursuant to this act, shall be liable to a penalty of double the amount of the tax on the wine spirits or other spirits so unlawfully used. Whenever it is impracticable in any case to ascertain the quantity of wine spirits or other spirits that have been used in violation of this act in mixtures with any wines, all alcohol contained in such unlawful mixtures of wine with wine spirits or other spirits in excess of ten per centum shall be held to be unlawfully used: *Provided, however*, That if water has been added to such unlawful mixtures, either before, at the time of, or after such unlawful use of wine-spirits or other spirits, all the alcohol contained therein shall be considered to have been unlawfully used. In reference to alcoholic strength of wines and mixtures of wines with spirits in this act the measurement is intended to be according to volume and not according to weight.

SEC. 45. That under such regulations and official supervision, and upon the execution of such entries and the giving of such bonds, bills of lading, and other security as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, any producer of pure sweet wines as defined by this act may withdraw wine spirits from any special bonded ware-house free of tax, in original pack-

ages, in any quantity not less than eighty wine-gallons, and may use so much of the sam as may be required by him, under such regulations, and after the filing of such notices and bo ds, and the keeping of such records, and the rendition of such reports as to materials and products and the disposition of the same as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury shall prescribe, in fortifying the pure sweet wine made by him, and for no other purpose, in accordance with the limitations and provisions as to uses, amount to be used, and period for using the same set forth in section fifty-three of this act: and the Commissioner of Internal Revenue, with th approval of the Secretary of the Treasury, is authorized, whenever he shall deem it to be necessary for the prevention of violations of this law, to prescribe that wine-spirits withdrawn under this section shall not be used to fortify wines except at a certain distance prescribed by him from any distillery, rectifying-house, winery, or other establishment used for producing or storing distilled spirits, or for making or storing wines other than wines which are so fortified, and that in the building in which such fortification of wines is practiced no wines or spirits other than those permitted by his regulation shall be stored. The use of wine-spirits free of tax for the fortification of sweet wines under this act shall be begun and completed at the vineyard of the wine-grower where the grapes are crushed and the grape juice is expressed and fermented, such use to be under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the Commissioner of Internal Revenue shall provide by regulations the time within which wines so fortified with the wine spirits so withdrawn may be subject to inspection, and for final accounting for the use of such wine-spirits and for rewarehousing or for payment of the tax on any portion of such wine spirits which remain not used in fortifying pure sweet wines.

SEC. 46. That wine-spirits may be withdrawn from special bonded warehouses at the instance of any person desiring to use the same to fortify any wines, in accordance with commercial demands of foreign markets, when such wines are intended for exportation, without the payment of tax on the amount of wine spirits used in such fortification, under such regulations, and after making such entries, and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security to prevent the use of such wine-spirits free of tax otherwise than in the fortification of wine intended for exportation, and for the due exportation of the wine so fortified, as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and all of the provisions of law governing the exportation of distilled spirits free of tax, so far as applicable, shall apply to the withdrawal and use of wine-spirits and the exportation of the same in accordance with this section; and the Commissioner of Internal Revenue is authorized, subject to approval by the Secretary of the Treasury, to prescribe that wine-spirits intended for the fortification of wines under this section shall not be introduced into such wines except under the immediate supervision of an officer of internal revenue, who shall make returns describing the kinds and quantities of wine so fortified, and shall affix such stamps and seals to the packages containing such wines as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Whenever such wine-spirits are withdrawn as provided herein for the fortification of wines intended for exportation by sea they shall be introduced into such wines only after removal from storage and arrival alongside of the vessel which is to transport the same; and whenever transportation of such wines is to be effected by land carriage the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as to sealing packages and vehicles containing the same, and as to the supervision of transportation from the point of departure, which point shall be determined as the place where such wine-spirits may be introduced into such wines to the point of destination as may be necessary to insure the due exportation of such fortified wines.

SEC. 47. That all provisions of law relating to the re-importation of any goods of domestic growth or manufacture which were originally liable to an internal-revenue tax shall be, as far as applicable, enforced against any domestic wines sought to be re-imported; and duty shall be levied and collected upon the same when re-imported, as an original importation.

SEC. 48. That any person using wine spirits or other spirits which have not been tax-paid in fortifying wine otherwise than as provided for in this act, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished for each offense by a fine of not more than two thousand dollars, and for every offense other than the first also by imprisonment for not more than one year.

SEC. 49. That wine spirits used in fortifying wines may be recovered from such

wine only on the premises of a duly authorized grape-brandy distiller, and for the purpose of such recovery wines so fortified may be received as material on the premises of such a distiller, on a special permit of the collector of internal revenue in whose district the distillery is located; and the distiller will be held to pay the tax on a product from such wines as will include both the alcoholic strength therein produced by the fermentation of the grape-juice and that obtained from the added distilled spirits.

SEC. 50. That on and after the day when this act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or the withdrawal thereof than if the same were imported respectively after that day: *Provided*, That any imported merchandise deposited in bond in any public or private bonded warehouse having been so deposited prior to the first day of October, eighteen hundred and ninety, may be withdrawn for consumption at any time prior to February first, eighteen hundred and ninety-one, upon the payment of duties at the rates in force prior to the passage of this act: *Provided further*, That when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its withdrawal.

SEC. 51. That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized to prescribe such regulations as may be necessary for the enforcement of this provision.

SEC. 52. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint, and be proclaimed by the Secretary of the Treasury immediately after the passage of this act and thereafter quarterly on the first day of January, April, July, and October in each year.

SEC. 53. That all special taxes shall become due on the first day of July, eighteen hundred and ninety-one, and on the first day of July in each year thereafter, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for one year; and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced to the first day of July following. Special tax stamps may be issued for the months of May and June, eighteen hundred and ninety-one, upon payment of the amount of tax reckoned proportionately under the laws now in force, and such stamps which have been or may be issued for the period ending April thirtieth, eighteen hundred and ninety, may, upon payment of one-sixth of the amount required to be paid for such stamps for one year, be extended until July first, eighteen hundred and ninety-one, under such regulations as may be prescribed by the Commissioner of Internal Revenue. And it shall be the duty of special tax payers to render their returns to the deputy collector at such times within the calendar month in which the special tax liability commenced as shall enable him to receive such returns, duly signed and verified, not later than the last day of the month, except in cases of sickness or absence, as provided for in section three thousand one hundred and seventy-six of the Revised Statutes.

SEC. 54. That section twenty of the act entitled "An act to simplify the laws in relation to the collection of revenues," approved June tenth, eighteen hundred and ninety, is hereby amended to read as follows:

"SEC. 20. That any merchandise deposited in bond in any public or private bonded-warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided*, That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles."

SEC. 55. That all laws and parts of laws inconsistent with this act are hereby repealed: *Provided, however*, That the repeal of existing laws, or modifications thereof, embraced in this act shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications, but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modification had not been made.

Any offenses committed, and all penalties or forfeitures or liabilities incurred under any statute embraced in, or changed, modified, or repealed by this act may be prosecuted and punished, in the same manner and with the same effect as if this act had not been passed. All acts of limitation, whether applicable to civil causes and pro-

ceedings or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in, or modified, changed, or repealed by this act, shall not be affected thereby, and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this act may be commenced and prosecuted within the same time and with the same effect as if this act had not been passed.

THOMAS B. REED,
Speaker of the House of Representatives.
LEVI P. MORTON,
Vice President of the United States and President of the Senate.

Approved October 1st, 1890.
BENJ. HARRISON.

[Endorsed.]

I certify that this act originated in the House of Representatives.
Attest:

EWD. MCPHERSON, *Clerk.*

Office Supreme Court U. S.
FILED.
NOV 28 1891
JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

H. HERRMANN, STERNBACH & CO.

vs.

THE UNITED STATES.

No. 1050.

APPELLANTS' REPLY.

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Supreme Court of the United States.

OCTOBER TERM, 1891.

CHARLES STERNBACH ET ALS.	
vs.	No. 1050.
THE UNITED STATES.	

APPELLANTS' REPLY BRIEF.

Although the points, and many of the authorities, of the Government brief were discussed and considered in anticipation in our opening, yet it will more sharply present and define the issues between us if we reply succinctly to its several propositions, *seriatim*.

I.

Concerning the passage of the act.

Upon this branch of the case, the government presents three lines of defense, evidently selected with a view of falling back from one upon the other, as each successively is found untenable, until the final struggle is made upon the last.

1. The first line of defense, practically, consists of an effort to turn three or four words of the last paragraph of the Opinion in Gardner vs. Collr., 6 Wall. 511, into a denial of that right of investigation and research (as to the existence of a statute) which the whole course of the argument of that Opinion shows it was the intention of the court to assert.

The Attorney-General's assumption is that the document lodged in the Department of State is "the most appropriate evidence" of the law's existence; and therefore conclusive of it.

We deny both his premise and his conclusion; reiterating our denial that there is found in that department any "record" of the *passage* of a bill.

Congress has declared the Secretary of State shall receive original bills, which have become laws, for *preservation*. It is only such he is directed "to preserve." When the issue is whether a particular bill ever became law, it is arguing in a circle to say, because he is only entitled to custody of laws, whatever he has in custody must conclusively be deemed law. The fact of his possession of a document, purporting to be law, may sometimes give rise to an inference that it is law; but then, this would be merely *prima facie*, not conclusive, and rebuttable by contrary evidence.

We deny the premise that, upon the present issue, this is "the most appropriate evidence."

To accomplish what end is this "most appropriate?"

Appropriateness means suitability to a particular purpose. If the issue between litigants be merely as to the true construction of an *unquestioned* statute (say, under which of its clauses imports are to be dutied) the printed statute book is the most appropriate evidence of the reading of the law (because it is the most convenient) and is therefore made admissible and *prima facie*. (Act of June 20, 1874, c. 333, §§ 2 and 8, in 18 Stats. pp. 113–4, and second ed. R. S. p. 1090–

1). But when the very object is to learn if the text of the document in the Department of State *is* the language and bill that passed Congress, this is *not* the most appropriate evidence—but is *no* evidence—of *that* fact.

If the doctrine of the Atty. Gen's. "leading case" (His brief, 25 citing 32 N. J. L. 29) were admitted, that no constitutional restriction prevents Congress from making the printed law, or the paper filed in the State Department, conclusive, that would not help the appellee;—since Congress has not merely refrained from so doing, but has declared the contrary.

In our opening, we mentioned its abolition (in 1838) of any record in the State Department; and its prompt substitution of the departmental for the governmental seal. We now ask attention to its legislation, since the revision, as to the evidence of its acts.

The act of June 20, 1874, § 8, just above cited, is of this tenor;—

> SEC. 8. That the said *printed* copies of the said acts of each session and of the said *bound* copies of the acts of each Congress shall be legal evidence of the laws and treaties therein contained in all the courts of the U. S. and the several states therein." (18 Stats. 114: R. S. p. 1091.)

Upon the next page (1092) of the 1878 edition of the R. S. will be found this provision, in sec. 4, act of Mar. 2, 1877, c. 82 (19 Stats. 269) relating to this new edition;—

> "and when printed and promulgated, as herein provided, the printed volume shall be legal and *conclusive* evidence of the laws" etc.

The printed page (III) next to the title-page shows Mr. Evarts, Secretary of State, to have approved the *manuscript* of this edition Feb. 18, 1878.

March 9, 1878—before it was physically possible for a copy of this edition to be produced in any court—the

amendatory act of that date, chap. 26, was passed *striking out* the words "and conclusive," leaving merely "legal evidence," with this proviso added, *ex magna cautela*;—

"but shall not preclude reference to, nor *control*, *in case of any discrepancy*, the effect of any *original* act AS PASSED BY CONGRESS" since Dec. 1, 1873. (R. S. pp. 1092, 1093; 20 Stats. 27, where the marginal note is, "Rev. Sts.; new edition *prima facie* evidence.")

Thus we perceive the natural, ordinary meaning of the eighth section of the act of June 20, 1874, c. 333, is that intended by Congress by the words "legal evidence."

Gardner vs. Collector was decided Oct. Tr. 1867. (6 Wall. 499.) This amendatory act of March 9, conformed to the tenor of that opinion. (94 U. S. 269 top.)

The date "Dec. 1, 1873" was inserted because R. S. sec. 5601 had declared the revision not to affect later acts; and the effect of this amendatory act was to give to this second edition, to which it refers, precisely the same (*prima facie*) effect which the second section of the act of June 20, 1874, c. 333 (18 St. 113) had assigned to the first edition; and its eighth section to all printed acts. (R. S. 2d ed. pp. 1090-1.)

This amending bill was unanimously agreed to by the committees of both branches of Congress, and by both Houses.

In the Senate, after brief report of the bill, from his Committee by Sen. Christancy, Sen. Davis of Ills. added this one sentence; "It makes the revision *prima facie* evidence only;"—and the bill was then agreed to *nem. con.* Substantially the same thing occurred in the House. (Cong. Rec. Feb. 18, 1878—the same date as Secy. Evarts' approval of the mss.)

Thus we see the *extent* to which Congress considered

the printed reproduction of the writings in the State Department to be "the most appropriate" evidence—as *prima facie* merely.

The very opinion from which this expression is taken shows the Judge delivering it to be very careful to negative the idea that even the avowedly "most appropriate" evidence (whatever this may be, in any case) should be held conclusive;—for he affirms the "right to resort to *any* source of information * * * seeking *first* [not *finally*] the most appropriate," etc. (6 Wall. 511; 94 U. S. 268–9.)

"There can be *no* estoppel in the way of ascertaining the existence of a law" (*Id.* 267)

"The Court may resort to *any* source of information," etc. (92 N. Y. 139).

To one criminally accused, or whose rights of person or property are civilly affected, it may often be precisely as important to know *when* an act began to exist as in what form its existence began.

By referring to the printed transcript of No. 78 (Smyth vs. Carlisle) of the October Term, 1877, it will be seen that the tariff act of 1867 bore, in the handwriting of Andrew Johnson, these words before his signature: "Approved, March 2, 1867"—as printed in 14 Stats. 562.

There was introduced upon the trial at circuit the depositions of Hon. John C. Bancroft Davis (who produced the original document bearing this presidential approval), of President Johnson, and of his private secretary, Wm. G. Moore. By these last two witnesses the fact was established that the act was not signed by the President, until near noon of Monday, March 4, 1867; so that the plaintiff's goods, which arrived in New York March 2, and were entered before ten o'clock of March 4, were not subject to the duty imposed by that act—to which they had been subjected by the defendant-collector—and a verdict was rendered in favor

of the importers for that excess, so exacted. The above-mentioned testimony was objected to at the trial, and exception allowed defendant upon its admission. The government took an appeal to this Court, but it was dismissed by the then Attorney-General, with a statement of his reason therefor—that Judge SHIPMAN's ruling was right.

The evidence of the paper and its endorsement were not held more appropriate than that of the President and his private secretary—since the latter told the truth, while the former did not.

Near the top of page 23 of that transcript, as printed, will be found this extract from the House Journal;—

"A message was received from the President of the United States, by Mr. W. G. Moore, his private secretary, notifying the House that he did, on the 2d day of March, approve and sign bills and joint resolutions of the following titles, viz.;—

"H. R. 793. An act to provide increasee revenue from imported wool, and other purposes."

This was preceded in the Journal, and in transcript No. 78, by an entry that Mr. Trowbridge, from the Com. on Enrolled Bills, reported that the committee did, on the 2d day of March, 1867, present that bill to the President. *(Ibid.)*

This action of the Attorney-General, after Gardner vs. Coll. 6 Wall. 499 was decided, will certainly offset the abstract opinion of Attorney-General Black, written many years before.

To our suggestion that the signatures of the presiding officers are no more statutory certificates than that of the Clerk that the bill originated in the House (though all these may aid the President, just as the checkings of bureau-clerks do the accounting officers of the Treasury, and the heads of departments) we now wish to add that they have no tendency to prove that no

sheet was dropped out by the way between Congress and the President.

The Attorney-General's brief (foot of p. 26) repeats his view that many states allowing recourse to legislative journals, etc., do so because of the phraseology of their constitutions:—on the contrary, we reply again, with the utmost emphasis, that in almost (if not quite) every instance of a denial of this right, it has been expressly based upon some supposed constitutional or statutory bar, and not upon general principles, though the latter may be referred to. This is notably so in his "leading case" from 32 N. J. L. 29, 35–6. See also 30 Ind. 514; 70 Ind. 338; 10 Nev. 185; 20 Ct. 8; 32 Miss. 684.

Most respectfully, we submit that the assumption (Atty. G.'s Br. pp. 26 and X) that the N. Y. Court of Appeals has not authoritatively declared its right to look into whatever quarter it will to determine the existence of a statute rests upon a distinction without a difference. If the signatures of officers, lodgment in and emanation from a particular custody, etc., afford conclusive evidence of the passage of a law, they equally prove it to have passed *properly*. This is our criticism upon 46 N. J. L. 185 as compared with 32 N. J. L. 29, (see our former brief, pp. 38, 39.) The N. Y. Court of Appeals recognizes no such distinction, but clearly repudiates it in its language (citing 6 Wall. 499; 41 Md.) stating a *general proposition* applicable to *all* judicial inquiries into the existence of a law.

So far as the English decisions are concerned, the appellee's brief (p. 23 bottom and p. 24) shows them to support plaintiffs' contention; stating *the reason assigned at law for not going behind the enrollment in chancery to be, because the law required them to be there enrolled*—but you could go to original papers in Parliament as to

private acts, because *not* enrolled. Now, there is no provision for any *enrollment* of the *approved* act of Congress; nor for any *record* of them, in the State Department or elsewhere.

2. The second proposition of the first division of the government brief is that, if you can fall back upon the Journal, you can go no further, and that the Journal does not show the omission in this case.

Here, an error of law is mingled with a mistake of fact. We say you can go behind the Journal; and that the Journal shows the omission.

All that the distinguished counsel have urged in their first proposition wars against their second.

Taken together, they amount to this:—that the Journal is absolutely unreliable—and you cannot go behind it!

Those considerations (of haste, etc.) impugning the weight to be given to the Journal do not at all affect the "principle" (6 Wall. 511) laid down by this court, and avowedly followed by several of the highest state tribunals, that "There can be no estoppel in the way of ascertaining the existence of a law" (94 U. S. 267; 92 N. Y. 139); but that "*any* source" of information may be resorted to upon this question. *Truth* can be searched for everywhere—even at the bottom of the well.

It will be noticed that the one thing *not* denied is the fact of that omission which is stated in our record.

Their only claim is that the truth is so snugly concealed that you cannot find it; and they are willing to concede (in effect) that you may go just so far as not to find it.

The Journals *show* the omission, though they do not recite the bill, or its amendments.

It is impracticable that they should show, *in extenso*, the contents of every bill, and the tenor of every

amendment proposed to it. They do show the bill by its number, and every amendment to which either House agreed by its number; and their fate upon a conference between the two Houses, where they disagree. In the present instance, it recites those changes of phraseology made, as a compromise, in the committee of conference; not (otherwise than by numerical reference) those agreed to or abandoned as they originally stood.

But *reference* is a means of showing; a brief index, directing us where full information can be found.

The House Journal, at pages 1088-9 *et seq.*, shows the report of the conference committee, and the disposition of every amendment proposed by the Senate: first, "that the Senate recede from its amendments numbered 57, 58 * * * 449," etc.; "that the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 6, 7," etc.

It will be seen, for example, that amendments 1 and 5 (and many others) are in neither list. This is because the committee agreed upon a modification of these amendments; so they, having never before been presented in that form to, or adopted by, either house, were specified in the report and, hence, entered at large upon the Journals as part of the committee's report. All unchanged Senate amendments were merely referred to by their respective numbers, which were an index to them upon the printed document, in the hands of every member, and still preserved and accessible.

Thus is clearly shown the omission we allege. *Id. certum est*, etc. The actual fact is indisputable.

That cases can be hypothetically conjectured in which the means of verifying, explaining, applying or impeaching the Journal will not be at hand is no reason for refusal to employ these means, when known and shown to be easily accessible. The supposed instances

of their non-existence will be merely the common case of a failure of proof.

If the existence, or non-existence, of a law be once ascertained and declared by the court, this ascertainment can always be resorted to in later cases (even between different parties) because it is a matter of judicial cognizance, upon which resort may be had "to any source of information."

The full details of the conference committee's report, to which we have above referred, are not incorporated into our record, because they are but evidence of the *ultimate fact* found by the Board of General Appraisers.

3. The third proposition upon which the defendants fall back, and will probably most strongly defend as the reason why this Court should do what the House of Representatives persistently refused to do, is that—conceding the Court to take cognizance of that *fact* patent to everybody else who has examined into the subject—the omission did not affect the other "portions" of the act; which is, therefore, not invalidated thereby.

They say (p. 43 top);—

"If what was omitted did not change the operation and character of that which was enrolled, the answer must be in the negative. * * * If appellants' section 30 is not a compensation and consideration on its face for *some* of the provisions of the act which now have the *form* of law, then it may be said that its omission did not destroy the identity *pro tanto* of the law," etc. (Gov't brief, p. 43.)

Looking now at the "enrolled portion" having "the form of law," we find this as its

"SEC. 30. That on and after Jan. 1, 1891, the internal taxes on smoking and manufactured tobacco shall be six cents a pound, and on snuff six cents a pound." (26 Sts. 619.)

At the date of the revision, the excise on such tobacco was twenty-four cents a pound, and on snuff thirty-two cents. (R. S. § 3368.)

Without specially referring to intermediate legislation, which had reduced these taxes, we find the fourth section of the act of March 3, 1883—which related, as does that of 1890, to both internal and customs taxes, as necessarily connected in a common design and destiny, to meet the necessary disbursements of the government—reducing the rate on both articles to eight cents a pound; *coupled with a proviso for "a rebate of the full amount of the reduction," identical in purpose and almost so in phraseology with the omitted provision* of the bill which passed Congress in 1890.

To pay this (1883) rebate, Congress set apart the sum of $3,750,000. (23 Stats. 2.)

In 1890, Congress appropriated (by an omitted clause) so much as might be necessary. (Rec. 5 bottom.)

To paraphrase, interrogatively, the above-quoted language of our opponents, did not "what was omitted change the operation and character of that which was enrolled?" Is not "appellant's section 30 a compensation and consideration upon its face for *some* of the provisions of the act which now have the *form* of law?"

If an affirmative, instead of a negative, answer must be given, the appellee's argument (at this part of it) virtually concedes that the omission destroys the *identity (that is the point)*, of the bill which passed Congress.

It will, nevertheless, be argued that the omitted provision does not connect itself with anything but the tax upon snuff and tobacco. *Quien sabe?* Who can confidently affirm that the several parts of this single financial scheme had no relation to each other? That customs duties were not increased upon some articles (say, like our importations) because of the reduction and rebate upon tobacco and snuff? The law does not require us to show affirmatively an absolute, indissolu-

ble, connection between the omitted, or unconstitutional, provision and any remaining portion of the act; the courts (8 Gray 339 and other citations upon p. 61, our opening brief) say it is enough if there *may* have been such connection *in the minds of the legislators.*

It is for those asserting the validity of the mutilated bill to show there *could* have been none.

What we do know is, that the House of Representatives dissented from the passage of this bill without the provision under consideration. The Court are asked asked to *guess* that its omission *would* have made no difference as to the enactment of the law, against the ascertained fact that it *did.*

If the great number of points of disagreement which arose upon this voluminous bill weakens the emphasis, it does not alter the fact, of dissent as to any one of them.

As the appellee's argument upon their first proposition militates against their second, so this third proposition antagonizes the authorities upon which they first relied; notably "the strong and convincing opinion" in "the leading case on the subject" (32 N. J. L. 29) and that of the Nevada Court, etc. We have already noticed (opening brief, p. 42) that these Courts avowed that if they were permitted to inquire, and discovered the lack of identity, the law *must* be declared null and void. The opinions, so eulogized by appellee, were able efforts "how not to do it."

The quotation (appellee's brief, p. 44) from Cooley's Const. Law, 209, is evidently intended by its author to apply to cases like those in which the purport of some sections is sufficiently indicated in the title, while that of others is not, etc.

Certainly, Judge COOLEY's application of his remarks is entirely to those statutes which, just as they appear

upon the statute-book, have been substantially assented to by all the legislative branches of the State; but there is some formal defect. Such are the title cases, three several readings, etc.; but we deem it impossible to consider the omission of an entire paragraph, upon which one House insists until it prevails, a defect of *form*. If so, where in an act does form end, and substance begin? and how can it be told which is which?

Replying (Appellees' brief, p. 46) to the abstract question put concretely by us at top of page 23 of our opening brief, in the form of inquiry whether President Hayes, by signing after removal of the four or five lines obnoxious to him, could have made the so-mutulated army-bill law, the appellees admit he could not; assigning, however, as their only reason for declaring such an approval a *nullity*, that it would be an attempt of the Executive to exercise the power of amendment.

An amendment, legislatively speaking, is a change in proposed legislation.

If made without authority, the personality of the party making it, and his motive (if any) therefor, must be wholly immaterial. Upon the above-mentioned concession of the appellees, we reiterate the proposition upon p. 23 of our former brief; that, if the presidential approval would be a nullity if *his* action expunged a constitutional provision of the law before signing it, it is none the less null if the excision were by some clerk, known or unknown, or other unauthorized person, having just as much and just as little power to *amend* as the President.

It is the *fact of change* (amendment!) and not the identification of the brain that willed or the hand that executed it, that defeats the congressional purpose; no matter whether that change be effected by the Chief Magistrate, or by a fourth-class clerk; whether the former does it deliberately and conscientiously, or the latter through somnolent carelessness or venality.

The pertinent consideration, in either case, is that Congress and the President do not respond *ad idem*.

If such a change (however made) does not vitiate the law, then he who effects it, whether President, clerk or lobbyist, is in fact the legislator, and not Congress.

We repeat, it is no answer to say that, if this be so, a wicked, corrupt, or careless hand may defeat the will of Congress. *The capacity to destroy is essentially different from the rightful power to create.* As suggested in our opening brief (p. 23) that this statute should fail, because of the mistake made, is merely one more instance of the universal law, that the carelessness or fraud of the weak or wicked may frustrate the most perfect scheme that wisdom can devise, in legislation as in every other effort of human thought and activity; but that such blundering or wrong-doing can no more create law than, in other fields, it can supply the place of the well-devised plans it foils.

An hour's delay of a Grouchy may cost an Emperor his victory and his crown; a felon or a careless hand may fire the temple of Diana; the friskings of a puppy may in a moment destroy the fruits of a Newton's laborious years.

> "A thousand years scarce serve to form a State;
> An hour may lay it in the dust."

The foolish may confound the wise; the weak the mighty; and "*things which are not, bring to naught things which are.*"

Since this is the law of Nature and of God we may know that it is well. Applying it to legislation, it is far better that a single proposed statute should fail than that this Court should put it into the power of the corrupt or careless to create laws in the future. The failure of any single enactment is of small importance compared to the probable consequences of allowing the theory of the appellee's brief to prevail. Had not Con-

gress postponed this matter to the expiring hours of a protracted session no such complication as we are considering would have occurred, or had the bill been newly enrolled within ten days (see Approval, 12 Stats., 821), Hodge, 18 Ct. Clms., 700.

Dow vs. Beidelmann, 49 Ark., 325.

Or, had it been re-enacted.

II.

Sugar-bounty.

The appellees' first contention as to sugar-bounty is (as in regard to the omission) that, palpable as it is, this Court cannot judicially see it, so as to form and express an opinion as to its constitutionality. The objection to it is fully presented upon the record, by persons certainly affected and prejudiced by these provisions, and entitled to raise the issue.

We cannot doubt that the question will be considered and decided.

Necessarily, it is defended as coming under the power to tax for the *general* welfare;—necessarily, because nothing else in the constitution can be so distorted as to give any color of sanction to it. *Dolosus versatur generalibus.*

Upon the very page (9 Wh. 199) to which appellees refer, MARSHALL, C. J. indicates his understanding of the term 'general welfare' by saying "It does not interfere with the power of the States to tax for the support of their own governments."

See 13 Pa. St. 104, as quoted in 20 Wall. 664; our former brief, p. 51 bottom.

The purpose must be, as shown in that brief (pp.

51–55) *directly* for a governmental end, and not an *incidental* general benefit;—not "to load the tables of the few with bounty, that the many may partake of the crumbs that fall therefrom." (58 Me. 603.)

"Such is the view of Mr. Justice MILLER," and of the other commentators mentioned upon page 65 of appellees' brief (1 Story, Const. §§ 908 *et seq.*; 920 *et seq.*; 922; 926 *et seq.*).

The hand that wrote (20 Wall. 664) that all such legislative attempts were "none the less *robbery* because done under the *forms* of law and *called* taxation," while "not legislation, *nor is it taxation*," never penned a word implying the possession by the federal government of any greater right to rob than the States possess.

On the contrary, Judge MILLER taught his pupils that the federal power of taxation was more circumscribed than that of the States, adding:

"The general government can levy taxes, but they must be for a *defined* purpose, *such as* the payment of the public debt, or of the army and navy of the United States. It has no right to raise money by taxation for religious purposes, or for a thousand things for which the State may impose taxes, and collect them of the people," (Lect. on Const., 104; Id., 247; 1 Story, Const. §§ 922, 963, 990.)

The only purpose clearly *defined* in the body of the present act, is to pay sugar-bounties.

The States also legislate for "the general welfare" of their citizens; *ex. gr.*, the promotion of "common welfare" is specifically mentioned in the constitution of Maine; but the State courts agree with this Court that the power now sought to be exercised is not included within this term.

Our opening brief, pp. 51 to 55.
Curtis v. Whipple, 24 Wis. 354.
Norris v. Waco, 57 Tex. 640 hot.

Appellees note that these were cases of municipal taxation; but, in every instance, the taxes were to be

aid under State legislation. At the commencement of their quotation (Appellees Br. 82) from 20 Wall. 655, it will be seen Judge MILLER considers direct legislative imposition of the tax, or the interposition of a municipal agency, of no importance. The municipality is but part of the State machinery (U. S. v. Balto., 17 Wall. 329) created, changed, or abolished at will; and it is is as such that the States assumed to authorize the taxes which the State courts declared void, because not laid for a public purpose. Cole v. LaGrange, 113 U. S. 6.

Whenever legislation permits the issue to be presented, the authority of this court to decide the constitutionality of federal enactments is as great as that of State tribunals with reference to the tax-laws of a State.

Foreign and interstate intercourse, the army and navy, and many other subjects, may make that a federal public purpose which is not so as to the states; but this does not leave the federal power without limit, even though a more liberal interpretation be applied to its exercise, *when directed toward the execution of delegated powers.*

"Have Congress a right to raise and appropriate the public money to any and every purpose, according to their will and pleasure? *They certainly have not.*" 1 Story, Const. § 990.

Ib., § 963.

"Tax legislation may be colorable merely, either *because the purpose for which the tax is demanded is not a public purpose*, or *because of the absence of some other element in taxation.* When that is the case, the judiciary is the efficient check, and it must *protect individuals* and *protect the public* against what, in such a case, would be *an attempt at lawless exactions.*" (Cooley, Taxn. (2d ed.) 46; *Id.* 55 top; *Ib.* 104).

Cy. vs. Southgate, 15 B. M. 498.
Cheaney vs. Hooser, 9 *Id.* 344–5.
Hurtado vs. Cal., 110 *U. S.*, 536 *mid.*

Whatever may have been thrown out in earlier decisions, or by some authors,

"Certain it is, that the more recent constitutions, and the more recent judicial decisions, show a disposition not to abandon the taxing power to the often ill-regulated and despotic will of our fluctuating and hasty legislation." Sedgw.

After all, Judge MILLER anticipated every view of the subject in the Topeka case. He declared, *as to this taxing power*, that

"The theory of our Government, State and *National*, is opposed to the deposit of *unlimited power* anywhere" (20 Wall., 663 top).

At the middle of the same page, he adds that "Of all the powers conferred upon government, that of taxation is most liable to abuse. *Given a purpose or object for which taxation may be lawfully used*, and the extent of its exercise is in its very nature unlimited." *The limitation he does assert is as to its purpose.* If that be shown to be unlawful, the tax must fall. That showing, and the determination thereon, must be made by and to a Court; for the question raised is judicial.

"*Generally*" (as Judge COOLEY notes) there can be no judicial construction of a tax law, because of the difficulty of presenting the subject to a Court, since an injunction of federal tax-collections is expressly prohibited, and the U. S. can only be sued upon contracts; but, whenever it *can* be raised and presented, as it is here, the ordinary limitations of the words 'general welfare' to a *direct* public purpose should be applied.

1 Story, Const. *ubi sup.*

This question, of the constitutionality of a law, can never be presented and determined abstractly. It must always be raised by somebody whose person or prop-

erty is affected by the execution of the statute, the validity of which he impugns. Nowhere have we found this idea better expressed than by Mr. Evarts in the exordium of his defence of President Johnson; —

"It is in facts and instances that the people are taught their constitution and their laws; and it is by facts and on instances that their laws and their constitution are upheld and improved. Constitutions are framed; laws established; institutions built up; the processes of society go on until at length by some opposing, some competing, some contending forces of the State, an *individual* is brought into the point of collision, and the clouds surcharged with the great forces of the public welfare burst over his head."

Impeachment of Prest. Johnson, Vol. II., p. 269.

Until the opportunity for raising, and the individual who can raise, the question of constitutionality present themselves there can be no presumption from the long existence of such legislation upon the statute book; though no such fact is an element of the present case.

In Maine, a law which for more than half a century—almost as long as the State had existed—had been enforced, reproduced in each revision, was declared unconstitutional so soon as challenged; the present Chief-Justice thus answering the suggestion of acquiescence:

"It is urged upon our attention that this Statute is of ancient origin, existing in 1824. But the judicial opinion and the public sense were not so much awaked to the importance of the principle underlying this matter then as now" (71 Me., 251).

Boyd vs. U. S., 116 U. S., 635.
Sedgw., St. & Const., *ubi sup.*

Examination will show the acts enumerated upon page 70 of appellee's brief as congressional precedents for the present legislation are not so.

Many of them are not bounties, as this word is usually understood; all of them, *if they prove anything*

prove the power to tax to be absolutely unlimited, *as to the purpose* to be attained; contrary to the best and most authoritative exposition of the constitution.

1 Story on Const. §§ 926 *et seq.*; 963; 990.
Loan Assn. vs. Topeka, 20 Wall. 663.
Cooley and Sedgwick, *ubi sup.*
Hurtado vs. Cal. 110 U. S. 536-7,
and authorities *passim.*

For instance, the very first act—to send food to the sufferers by earthquake in Venezuela. It can hardly be contended that this donation was for the "general welfare" of the United States. (1 Story, Const. § 922 etc.) Certainly, it was not directly so. It was a charitable gift, as much so as a shilling dropped into a beggar's hat. It sprung from the kindly impulses of the heart, and not from any considerations of public policy, or of domestic governmental ends. Its amount was not sufficient, nor its character such as to inspire any wish to prevent the charity: but had the desire to do so been never so strong, and the violation of the constitution never so palpable, no practicable way for obtaining a judicial determination thereon offered itself.

Though the amount had everything to do with the passage of this Venezuela gift, and with any disposition to contest its validity, it has nothing to do with the principle involved. But suppose that short act to have been an ordinary revenue bill; and to have contained, instead of a donation of a comparatively few thousands of dollars' worth of food, a provision to raise by tax ten millions to be given to Venezuela: No one can imagine this, or any other, Court holding it to be constitutional, if the opportunity for judicial decision was in any way afforded.

Yet it is to this extent that it is a precedent, *if it prove anything.*

The right to *give* away the results of taxation is no greater, if the distribution is to be among our own citizens than among foreigners. It does not exist at all.

The objection to it, as stated in the Topeka case and all similar decisions, is fundamental, and as applicable to federal as to state taxation; "limitations on such power which grow out of the essential nature of *all* free governments." (20 Wall. 663 top.) It is reprobated and condemned in a single sentence of Mr. Justice BLATCHFORD's opinion in the Parkersburg case;—

> "It is taxation which takes the private property of one person for the private use of another person." (106 U. S. 501.)
>
> Cole vs. La Grange, 113 U. S. 7, 8. (GRAY, J.)

Their second precedent is the New-Madrid act, whereby those whose lands in Missouri territory, granted them by the U. S., had been injured by earthquake, might exchange them for other lands, their title to the first thereby *reverting* to the United States! (3 Stats. 211.)

Their third instance is merely authority given the collector to postpone the collection of bonds for duties, executed by those who had suffered from fire in N. Y., provided the U. S. were made secure from loss and for the ultimate payment of these bonds! (5 Stats. 6.)

Later, the Sec'y. of the Navy was authorized to employ the U. S. ship Macedonian (which he already had the right to dispatch whithersoever he pleased) in conveying voluntary contributions of food to Ireland! (9 Stats. 207.)

So we might go through the whole list; but it is unnecessary. No one of these acts was susceptible of, or subjected to, judicial scrutiny. If an occasional scruple was expressed, still they practically passed *sub silentio*. The blank in the Venezuela act was not filled at the motion of "the strictest constructionist the country has ever seen" (Appellee's Br. 71) but was moved by Mr. Calhoun, *then* the ardent advocate of a protective tariff (as Mr. Webster was its opponent, on constitu-

tional grounds) who (Mr. C.) pressed through, by the close vote of 86 to 84, a large appropriation for internal improvements.

The appellee's list (p. 70) is excepted from a speech in favor of the proposition, which never prevailed even in Congress, that the education of the children of the States is a *federal* duty!

Submitted to no judicial inquiry, they prove nothing in regard to this act; as much greater in amount as it is essentially different in character; as to which we are afforded the opportunity we now embrace.

An exchange of lands; the use of a national vessel; slight extensions of existing debts; small donations of food, or its purchase (in trifling amounts) from funds already in the public treasury, to be given to foreign or domestic sufferers by earthquake, flood or fire, or to those to whom the grasshopper had become a burden—evading judicial scrutiny, they prove nothing as to the constitutionality of the present act.

The cod-fish bounty (not in this list, though later mentioned by appellee, p. 80) was never judicially examined; its constitutionality was denied by Madison and many others; and it was *only* vindicated as, in effect, a drawback of the duty upon salt. (Expressly so in act of 1789, c. 2, § 4, 1 Stats. 27.)

Appellee's brief (p. 81) seems to adopt Sen. Morgan's idea that a drawback and a bounty are identical; but this is certainly not so in fact, hence cannot be so treated in law.

A man brings in some raw material of his manufactures, intending to send abroad the completed article. What he imports, he exports in a changed form. A duty is only laid upon articles consumed here, and thus becomes a tax upon the consumer. (5 Howd. *576 top.) If not intended to be consumed in this country, the ordinary ground of assessing duty is absent; it is taken only provisionally, as a security that

the intended purpose of re-exportation shall be executed; in which event, the identical sum paid as duty (less a seigniorage to the U. S. for the trouble; see 1 Stats. 27, and all acts since) is returned to the very man who paid it! If it were not promised, the goods would never have come into the country at all. It is a form of free entry, adopted for the security of the U. S. from imposition. It is an abuse of language to call the placing of any article upon the free list a bounty! It indicates the kind of argument which *has* to be resorted to, in support of the first five paragraphs of Schedule E of this act.

The appellee seems to prefer Judge HARE's view of a protective tariff to that of Madison (Brief, pp. 77, 78). Greatly esteeming Judge HARE and valuing his work, we may be pardoned, nevertheless, for choosing to stand with Madison, upon a constitutional question; especially since we also perceive a very broad distinction between a tariff which incidentally (though designedly) protects and a bounty.

Some imports *must* be taxed, in order to support the government. This necessity, recognized by our own constitution, is declared by the experience and practice of every civilized nation. There is no country that taxes *all* its imports; here and everywhere, it has been found advisable to admit free certain articles, and to graduate at varying rates the duties placed upon others. It has been so arranged in every tariff which our own or any other county ever enforced. Being practically compelled to such an arrangement of the subject, it is for Congress to exercise its discretion to place a high, low, or no, duty upon each article of importation, upon such considerations as to it seem proper; being morally bound to so exercise it as it shall deem most advantageous to the general welfare of the country.

This was precisely what was done by the first tariff, act of July 4, 1789, one line of the introductory clause

of which appellee's brief (p. 76) italicizes, and by every subsequent tariff there enumerated.

Manufactures were to be encouraged and protected *by the imposition of the declared duties*, and not otherwise; *not* by a direct distribution of the proceeds of taxation.

We consider the result of this exhaustive research by appellee, through all our statute books, to find a precedent, or parallel, or vindication, of these sugar-bounty provisions a conclusive admission that none can be found—for those cited certainly are not.

THIS IS THE VERY FIRST INSTANCE IN WHICH AN ACT FOR RAISING REVENUE AVOWS UPON ITS FACE A PURPOSE TO DISTRIBUTE A LARGE AND INDEFINITE PROPORTION OF THE MONEYS SO RAISED BY TAXATION AMONG A FAVORED CLASS, PURSUING ONE SPECIFIED OCCUPATION.

It is fortunate, indeed, that the very first attempt of this kind should present itself in such a form as to have its constitutionality speedily determined by the Supreme Court.

That the bounty is not, by the act, divided among individuals therein designated by name (Appellee's br. 72) but among a *class*—those who tap the maple, raise the beet for its sugar (instead of for "a boiled dinner") or cane for its juice—does not make the purpose "public." This is precisely what the Massachusetts and Kansas laws did; gave to a *class*, made the objects of the condemned legislation because of their losses by fire or drought; not mentioned by name.

Unless those principles of justice, requiring a public purpose to be the *direct* object of the exaction, are applied to federal tax-laws, there is absolutely *no* restraint; but the power to treat the public purse as one's own, and to *give* away the proceeds of taxation, is as unlim-

ited as is the ingenious cupidity of congressional lobbyists.

This theory of unrestrained power in Congress is that which the appellee is driven to maintain. Judge STORY, in one of the before-cited sections, evidently thought he had brought the argument in support of that theory to the *reductio ad absurdum* in these five lines:—

It "would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good, it would be a power to do whatever evil they pleased." (1 Story, Const. § 926. See *Ib.* § 990.)

This Court has declared *all* power of taxation limited by the necessity of being exercised *solely* for a public purpose. It is *only* with such purpose as an object, that its exercise (for that purpose) is unlimited. (20 Wall. 663.) Like a canal or river, it is laterally confined within narrow bounds, but longitudinally indefinite in its extension.

To declare the existence of these limitations, but a lack of authority to enforce them (and it must be lodged with the judiciary, if it exist anywhere) is a confession against our frame of government which all the antecedent decisions of this Court assure us will not be made.

"It would declare that an act which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is, in reality, effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. *It is prescribing limits, and declaring that those limits may be passed at pleasure.*"

Marbury vs. Madison, 1 Cr., 177.

The long extract (Appellee's Brief, pp. 78, 79) from

Mr. Hamilton's report contains no assertion of any other right than the admitted one to tax, *ad libitum*, for a *directly general* public purpose. If any unquoted portion of it, or other expression of its author, goes beyond this, it is negatived by this Court in the Topeka case.

Judge STORY notices that a proposition to incorporate into the constitution a provision for bestowing "rewards" for the "promotion of agriculture" was rejected. (Journ. of Cons. 261.)

The difference between the gratuity to sugar-producers by this act, and the benefits accruing to manufacturers under former tariffs is *the precise one* declared as the line and ground of distinction in the Topeka, Boston and other cited cases; that, in those tariffs (from July 4, 1879, down) the advantages so accruing to manufacturers were *merely incidental* (See Brewer vs. Brewer, 62 Me. 71-2 and cases) to an indisputable federal purpose—to defray the actual expenses of defending and supporting the government; to apply the sums raised by those duties in payment to somebody who has loaned his moneys or employed his person *directly* in the service of the United States, or has supplied something *directly* to the government for *its* use and consumption. If anybody besides the actual recipient of the money from the treasury was benefited by the details of the method of raising it, this was merely *as an incident to a governmental necessity*. There can be no such necessity to raise money to *give away*, on the theory that the gift to the few *may* ultimately enure to the indirect general advantage of the many.

The raising of imperatively-required funds, for strictly national purposes, has heretofore been so regulated and adjusted as INCIDENTALLY, to benefit certain industries.

This is the very first time taxation has ever been imposed to raise money for the avowed purpose of giving it away.

We are at the entrance of this dangerous path. If it be one which the National Government can lawfully and constitutionally tread, well and good—let future consequences take care of themselves; if it be *not*, the way ought to be barred *now*.

III.

Reciprocity.

The embargo act of 1809, a war measure, was sustained by the court as to the power of *Congress* to revive it upon the ascertainment and proclamation of a fact then contingent. As noticed, the tariff of 1890 proposes to do a very different thing.

The counsel for the appellants do not hesitate to accept the challenge to point out the very wide distinction, as it appears to them, between R. S. secs. 4219, 4228 and 4347 and the act under consideration. These sections (so far as they assume to confer any discretion or responsibility upon the President) *impose no tax upon any person or property of this country*; only (so far as the President can act under them) upon *foreign vessels*. In other words, it is intended as a commercial regulation; 5 Howd. 594, or, rather as a defensive measure against any adverse action *discriminating against our vessels*.

The other cited sections are mere police regulations, to protect our people and cattle from infectious disorders prevailing in foreign lands;—powers possessed by every Health Board of our cities and towns.

That these are brought forward, to justify the present bill, only emphasizes our proposition that *never before has any attempt been made to base the taxation of our*

citizens upon a presidential opinion of the reasonableness or equality of the legislation, or governmental action, *of other countries, whether discriminatory against us or not*; and that, in the present instance, it need not discriminate against us.

The President has the constitutional right to treat with foreign nations in regard to the burdens and restrictions which they may place upon our vessels, and we upon theirs, and can submit the result of his negotiations to the Senate alone for ratification. It certainly does not follow, that the liability of our own citizens to taxation (5 Howd. *576 top) and the amount of revenue to be raised thereby, can be made to depend upon his view of the general (not hostile) legislation or policy of another country.

In the one case, he is dealing with something which is a proper subject for foreign negotiation; in the other, he is not.

In the first instance the power given by statute is incidental to one conferred upon him by the constitution; in the latter, it is not.

Whether Congress can constitutionally make the taking effect (and continuance in effect) of a law contingent upon the ascertainment of a *fact* by the Executive, and make its enforcement discretionary with him; and, if so, to what extent; may depend, not merely upon the nature of the fact to be ascertained, but more upon the character of the statute, and the delegation of power in the Constitution of which it is an exercise.

That authority might be conferred upon the President, upon the occurrence of a specific fact, to relax the stringency of provisions relating to commercial intercourse with belligerents or foreign nations, friendly or hostile, would not at all imply that authority could be delegated to him, at will, to tax, or omit to tax, our own citizens.

We adhere to our view, that the present bill rests

the exaction or forbearance of the tax upon hides, sugar, etc., upon presidential *opinion*, instead of the existence of a definite *fact*, easily ascertainable, which is the contingency mentioned in the sections cited by the appellee.

Ex. gr. the quoted section, 4228. Nothing can be more easy and simple than to learn whether France exacts an entrance fee of five francs a ton from our vessels and only two francs from those of any or every other nation; or five cents a pound upon our hams, and but two cents upon Westphalian.

The question of an actual discrimination between nations, as to their vessels and commodities, is one of *fact;* but whether, in view of our admitting coffee and hides free and putting an enormous tax upon wool, it would be "reciprocally unequal and unreasonable" for Brazil or the Argentine to impose any duty upon our flour—and what rate (if any) would be "reciprocally equal and reasonable"—is purely matter of *opinion.*

The cited statutes refer to the existence or non-existence of *discrimination* against us—a fact. This section 3 taxes or omits to tax us, not according to the existence or non-existence of any foreign legislation, but according to the weight to be presidentially given to such *reasons* for it, as he may find or assume to exist;—clearly a matter of *opinion.*

The President taxes, or does not tax, the hides brought in for use of Lynn manufacturers, accordingly as "*he may deem*" the exactions of the Argentine Republic upon our flour (say) "reciprocally unequal and unreasonable" or otherwise.

Two ships come into Boston from Buenos Ayres the same day; one laden with hides, the other with scoured wool. The first enters and discharges her cargo duty free (if the President has not decreed otherwise); the other cargo pays a duty of thirty-three cents a pound, amounting (perhaps) to hundreds of thousands of dollars; what duty would it be deemed "reciprocally

equal and reasonable" for the Southern republic to place upon a cargo our flour arriving in Buenos Ayres from Boston on that same day? If this be a matter of *fact*, rather than of opinion, then we fail to understand the difference between the two.

It is easy to know what duty flour pays in Buenos Ayres or (omitting the element of uncertainty as to the President's views) what hides or wool pay in Boston; and whether flour from the United States is dutied abroad more heavily than Canadian; but whether, in view of our high tariff upon wool, and free admission of hides, the duty upon flour in a South American State is such as to justify subjecting its coffee to duty depends entirely upon the point of view, and the mental operation of one man, under this bill, *i. e.* on his opinion—what he "*deems*."

"*Deems;* (1.) *'to be of opinion.*" Webst. Int. Dict.

The President cannot "deem" any duty he please upon coffee. He can deem three cents, or nothing; or that sum to-day, and nothing to-morrow.

He whose will, deem, opinion, decision determines whether coffee shall pay that duty or not, really lays the tax, or forbears. He is the legislator, as to deriving revenue from this source, and not Congress.

"Uncertainty and ambiguity are the bane of commerce." (104 U. S. 702.)

The only will that can, constitutionally, determine the existence and extent of a tax is that of Congress; and, to impose the tax, its will must be *absolute*.

"To subject them to the operation of two laws upon the same subject, *dictated by distinct wills*, is, to my apprehension, something very much like oppression, if not worse. In short, *I am altogether incapable of comprehending how two distinct wills can, at the same time, be exercised in relation to the same subject*, to be effectual, and at the same time compatible with each other. If they correspond in every respect, then the latter is

idle and inoperative; if they differ, they must, in the nature of things, oppose each other, so far as they do differ."

Houston vs. Moore, 5 Wheat., *23.

The most that can be said in favor of this section is, that Congress has determined that sugar, etc., shall come in free, except when, from time to time, and separately as to different countries, the President may deem otherwise.

But this argument degrades Congress, by making their legislation, to the extent stated, subject to the will of the President. (7 Howd. *399.)

So construing the law, the Secretary of Agriculture, at page 12 of his last report, earnestly recommends to the President to *impose the duty* upon hides, as provided in this Sec. 3, where the countries from which they come have not granted "equal *concessions*" to our agricultural products. Hides have been on our free lists ever since 1872.

"With regard to this essential and sovereign power of taxation, it may be proper here to advert to the caution with which it was granted, and the extreme jealousy which was manifested towards any and every apprehended encroachment upon it by the constitution, when it was offered for adoption" (7 Howd. 503).

The power in Congress to tax is exclusive. It cannot be delegated, nor parceled out, nor left subject to another's will. The collection of a tax is executive; but the power of determining whether it should be laid or not, to what extent, and upon what grounds, is purely legislative; and, certainly, a power of this kind, which the people devolve upon their representatives cannot be delegated.

Rees vs. Watertown, 19 Wall. 116 bot.
Thompson vs. Allen, 115 U. S. 555 bot.
Erie vs. Wall, 21 Penn. 498.
Cooley, Taxn. (2d ed.) 61 bot. to 63.
Farnsworth vs. Lisbon, 62 Me. 451.

Stanley vs. Little, 6 Colo. 419.
Waterh. vs. Bd. 8 Heisk 859 top; 9 Bax. 400.
Keesee vs. Civ. Dist. 6 Coldw. 132.
St. vs. Hudson, 37 N. J. L. 19, 20.
St. vs. Commrs. 38 *Id.* 93.
Mundy vs. Railway, 43 *Id.* 347–8.
Aud. vs. A. T. & St. F. 6 Kans. 419.

Judge COOLEY, after noticing that the election of both branches of Congress by the people renders the provision for the origination of revenue bills in the House of less importance adds;—

"the requirement that executive officers shall confine themselves strictly to executive duties is one of the most valuable principles of the governmet. Indeed, the division of the powers of government is the most important of the checks and balances by means of which the benefits of orderly government are secured and pepetuated; and the least encroachment by one department on the powers of the other is usurpation, for which the law is supposed to provide the adequate remedy. Executive and ministerial officers enforce the tax laws; but, in so doing, they must keep strictly within the authority those laws confer, and *they cannot add to or vary*, in the slightest degree, any tax lawfully levied."

Cooley on Tax. (2d Ed.), 42.
Harden vs Kidd, 10 Cal. 403.
Houghton vs. Austin, 47 Id. 654–7.
Robinson vs. Dodge, 18 Johns. *352.
Trumbull vs. White, 5 Hill, 46.
Bellinger vs. Gray, 51 N. Y. 621.

Judge COOLEY observes that "these cases amply illlustrate an important *general principle*." (Taxation 2d ed. p. 66 top.)

The grade of the officer, or the relative importance of the duty assigned, cannot affect the principle. The exercise of a power devolved by the constitution upon Congress can no more be transferred to the President

than can a power conferred by law upon a municipal council, to grade a street, be by it assigned to the city engineer. If Congress could remit their power of taxation to the President, it could to any other officer, equally as well, since the providing of revenue to carry on the goverment is not incidental to any power constitutionally conferred upon him.

Thompson vs. Schermerhorn, 6 N. Y. 92.
Birdsall vs. Clark, 73 *Id.* 73.
Emig. Ind. S. Bk. 75 Id. 393.
Hydes vs. Joyce, 4 Bush. 469.
Mercer vs. Nav. Co. 8 *Id.* 307.
Ruggles vs. Collier, 43 Mo. 359.
St. L. vs. Clements, *Ibid*, 395.
Day vs. Green, 4 Cush. 433.
Lowell vs. Simpson, 10 Allen, 89,
and authorities and cases *passim.*

The present reference to the judgment and discretion of another, of a question of taxation, is far more indefensible than the making the existence and effect of a statute contingent upon its approval by the people. In such case, one act of the people at the polls determines, once for all. Here, the presidential opinion, uninterruptedly active and potential, is the pivot upon which the question of dutying, or not dutying, hides etc. constantly turns.

The distinction is well stated by the court of California ;—

"Secondly, it is said that the legislative power is delegated in those cases in which a statute is to take effect conditionally, as on the happening of a future event. In this case we are not called upon to decide whether a condition that a law shall go into operation only after a popular election, for example, renders the law nugatory. Nor is it necessary to inquire whether a distinction can be maintained between such a clause and *an attempt to transfer to an individual* or a board *the power of changing the terms and conditions*—the whole tenor and effect—of a statute after it shall have left the hands of the legislators. It is quite clear that

in the latter class of cases the legislature exceeds its authority. The law is not suspended until after the happening of a certain event, but takes effect (if at all) when it leaves the legislature; *the law itself*, however, *providing that it may be changed and a different law substituted, in the discretion of some person* or persons named. *The legislature cannot thus abdicate its functions* in favor of its own creature." (Then it certainly cannot in favor of a distinct branch of the government.)

Houghton vs. Austin, 47 Cal. 655.

At the bottom of page 657 of the same opinion, the Court say "the legislative decision, to tax or not, must be absolute, "otherwise the whole taxing power can be delegated." (47 Cal. 657 bottom.)

The appellees' brief (at p. 91) is incorrect in its statement that the application of the statutory alternatives depends upon the President's judgment, as to the existence of an unjust and unreasonable *discrimination* against the U. S.

Not at all; the question of mere *discrimination* is not submitted to him. He can put the duties upon the articles mentioned, as to any one country, although our exports are there received upon precisely the same terms as similar products of every other nation."

It may be noted, that it is conceded that *his "judgment"* determines the liability to tax.

This further statement, upon the same page (91) is also incorrect; that "he *simply* finds the *fact* upon which Congress has determined how the act shall apply; there is no interposition of the *judgment* of the President between the *decree* of Congress and the *enforcement* of the act, *as to the wisdom of the legislation.*"

Section 3 does *not* make his ascertainment, nor even his declaration, of inequality and injustice, effective to impose the duties; he, specifically, proclaims the *suspension of those provisions* relating to the free entry of

the mentioned articles coming from such countries as he may designate—else they continue to come in free. It is his proclamation of *suspension*, not his ascertainment of a relatively unjust condition, that is to be effective.

It will be observed that, in the above-quoted passage, (from their brief, 91) the appellees do not deny that the "judgment of the President" interposes between the "decree of Congress and the *enforcement* of the act"—it certainly does—but, they say, not "as to the *wisdom* of the legislation." Well, that is immaterial! He says nothing, one way or the other, about the wisdom or the folly of the measure, but his proclamation makes "*Congress decree*" (so appellees put it) that our importers and consumers of Argentine hides shall pay one and a half cents a pound or nothing, as his "judgment" dictates. To the ordinary apprehension, he whose word, or "judgment," accomplished the one result or the other would be deemed, as to this, the decreeing power.

By proclamation, upon his own judgment, he suspends provisions of law; cuts them down and resuscitates them, at pleasure; or gibbets them again:—and appellees consider that, in all this, "*he simply finds a fact.*"

IV.

Bounty and Reciprocity.

Each a Fundamental, Inseparable Provision of this Act.

1. It is argued that the bounty provisions have absolutely no connection with those dutying our goods, because these are of cotton and the bounty is upon sugar! (Appellees's Br. p. 59.)

The question is no more one of the commercial similarity of these articles than it is of chemical affinity. It is of their practical connection, as part of a complete tariff system. It is the relation of cause and effect; and, upon this (to sustain a law found to contain an unconstitutional provision) it has always been held that it should affirmatively appear that the other provisions could not reasonably be supposed to have been at all affected, in the terms and method of their legislative construction, by the design better to accomplish the illegal object.

Appellee's own argument (Brief, p. 84) states the fact that *this bounty did inseparably connect itself with the other provisions of Schedule E, and all these with the free entry paragraph 726.*

Upon that page (84) counsel urge that Congress was under moral obligation to give this bounty, if sugar was admitted free. Without conceding this—for we deny that any man has a vested interest (which can only be acquired of him by the government by purchase) in the perpetuation of taxes upon his fellow-citizens—it does contain this much of truth, that Congress would not have let in sugar free, *without* any bounty to home producers.

In passing, we may note that if the quotation (found on this p. 84) from Mr. Webster's defense of his change of position and vote upon tariff questions has any weight, it is only to the extent for which he used it;—to show that he considered the public policy, inaugurated against his vote and protest, of adjusting customs laws with a view to incidental protection, should be continued. He did not by his language attempt to assert the right to thus raise money to give away.

If *anybody* has a vested interest in existing tariff legislation, then *everybody* interested therein has the

same; and it cannot be changed to his prejudice, without the corresponding moral obligation to indemnify. The position is untenable. *Nobody* has any such right, legally, morally, nor equitably.

It must be accepted, as defendants concede (*ubi sup.*) that paragraphs 231 to 237 and 241 are not only connected together but, indissolubly, with paragraph 726, for the free admission of sugars.

If these bounty paragraphs are eliminated, as unconstitutional, 726 and free sugar must go out with them.

If free sugar did reduce revenues $60,000,000 (Appellee's br. p. 61) it is certain, as we claimed (our br. 58, 59), that the restoration of them to duty would dislocate the whole legislative scheme.

The defendant argues (Br. p. 64) that the decisions referring to revenue laws as a system are inapplicable "to a tariff, or an indirect tax of any kind." Tariffs are precisely what this court has treated as, and declared to be, a system (17 How. 93; 116 U. S. 21—that "*the whole system must be regarded in each alteration*" —and many other instances.) The question is not that appellee (Br. p. 72) assumes it to be, of equality as to individuals; but of an entire "financial scheme" (7 N. Y. 197) for raising adequate revenue, and (substantially) no more nor less.

That sum which is adequate for strictly governmental uses would be less than that required for these uses plus illegal bounties. The sum received with sugar free will be many millions less than if it pays duty.

Of the several provisions of this act, we may paraphase this language of this court;

"Indeed, it is quite manifest, from the face of the laws themselves, that they are together but parts of one larger whole." Va. Coups. 114 U. S. 305.

"*Intended* as a whole." 67 Ala. 76.

They must stand united, if at all; for divided they fall short of the legislative intent.

The courts have always held—in the first below-cited case it was thought so plain as to be 'conceded'—that 'the entire purpose,' if single, and "*all* the purposes," if more than one, must be public.

St. v. Osawkee, 14 Kans. 420–1.
Coates v. Campb. 37 Minn. 501.

2. The appellee assumes (Br. p. 59, bottom)—whether correctly or not is immaterial—that the reciprocity clause requires no expenditure and "could not have been intended to increase the revenue." If this is true, the inference that, therefore, "It is wholly independent of every other clause in the bill, and its passage, or failure to pass, had no bearing whatever upon the passage of the remainder" (*Ib.*), is not well founded.

The defendant adds: "The clause was an afterthought. It was not introduced until late in the session, after the bill had passed the House, and been much discussed in the Senate." (*Ibid.*)

Suppose our friends to have gone far enough behind the legislative journals (which do not show it explicitly) to have ascertained these facts correctly; the import of it is to us the reverse of what it is to them.

If "an afterthought" *it was adopted to save the bill* which, without it, "did not sell another bushel of grain, nor a pound of pork," outside our own boundries. These provisions were salvors taken on board to bring the disabled and foundering craft into the desired haven.

Will the *Court* save it, without this feature, when *Congress* would not?

It is a vital part of this legislation; a proviso to the free list, as to the enumerated articles, of sugar, etc.

The contest, whether hides should go into the free or

dutiable list, is historically well-remembered, and its issue was doubtful. It is morally certain that the hope that more extended markets for grain might be acquired by this *conditional* placing of hides upon the free list, harmonized a conflict likely to defeat the bill.

Obviously, this Section 3 connects itself, with hooks of invincible tenacity, to these articles upon the free list, viz., sugar, molasses, coffee, tea and hides. The right of these commodities to come in free is, by Sec. 3, coupled with the *condition*, that the President may suspend or destroy the right. This Court cannot, without legislating, make that right of free entry *absolute* which Congress has made *conditional*; and do it upon the assumption (not justified by the facts) that Congress *would* have thrown over Sec. 3 to save the rest of the bill; when the truth is it was taken on to save the bill.

If Sec. 3 goes out of the law, it must carry with it the other sections which together constituted one financial and political scheme for raising revenue.

If the limitations of the Constitution—in relation to the enactment of laws, the restraints upon and delegation of, legislative authority—are those we have (according to our understanding of them) hereinbefore indicated, we feel sure that as, under the guardianship of this Court, they are too strong to be broken through by power, so they cannot here be evaded by subterfuge.

"That cannot be accomplished indirectly which the organic law declares shall not be done directly." (120 U. S., 101 mid.)

"It is as the guardian of the bill of rights in the Constitution, as the watchful protector of the liberties of the people *against the encroachments of law and government*, that the people look to the Supreme Court with the greatest attention and the greatest affection" (Impch. Tr. 272 top).

Hurtado vs. Cal. 110 U. S. 536 mid.

We are confident this Court will notice the *fact* of

that omission, well known throughout the country to have happened, and will declare its effect (if any) upon this bill—whether it be deemed fatal or immaterial; that the sugar-bounty will be considered as a vital portion of this bill, as one financial scheme, and in the adjustment and relations of its several provisions—whether its aim be finally declared a public or a private purpose; and that Sec. 3 will be found so inseparably connected with the other sections of this bill that all must share one common fate—whatever that may be; and that the *constitutionality* of these provisions will be considered and determined by this Court.

V.

Consequences.

Our belief that the Court will definitely determine the questions presented upon this record is based upon our impression of its duty to do so.

For ourselves, we have earnestly felt that the same considerations of the public weal and our own obligation (in our place of humbler responsibility at this bar) to support the constitution of the United States, in its true construction and intent, required of us far greater research and effort than the mere pecuniary claims of our clients would demand or justify.

"As, then, duty has brought us all here to this procedure and has assigned to each of us his part in it, so through all its responsibilities and to the end, we must surrender ourselves to its guidance. Thus following, our footsteps shall never falter or be misled; and leaning upon its staff, no man need fear it will break or pierce his side." (*Ib.* pp. 269, 270.)

Throughout appellee's brief, interspersed in the discussion of its various topics, suggestions are thrown out, as to the serious effect of a reversal of the decree below, which, as they are needless to impress upon the Court the gravity of this cause, can only be intended to divert attention from the logical sequence of the legal argument.

In closing, appellee's brief says (p. 93) its authors have not "dwelt" upon the importance of sustaining this statute. Nevertheless, this idea is constantly recurring throughout its pages, like the dominant strain of an opera; supported by suggestions as unfounded in fact as they are immaterial in law. We have not chosen to digress, during our dissection of the arguments with which they are mingled, to consider them in the order of their appearance in the pagination of appellee's brief; preferring to treat them consecutively in a separate division of this reply.

We are even less inclined than our opponents to belittle the importance of this cause, while viewing its possible results in a different aspect.

Every imaginary evil at which they vaguely hint, as ensuing upon the failure of this bill, is in its character pecuniary, temporary and comparatively trivial; while the consequences, for good or ill, of its sustentation as law go down to the deepest foundations of the government, and will last as long as the Republic, even if they do not threaten its existence.

If it be expressly declared, or tacitly conceded, that any bill, differing in its structure from that which Congress sanctioned, can be imposed as law upon our people; that federal taxation is practically as unrestrained in its purpose as it is unlimited in extent;—if Congress can assign to the President *its* power of imposing or remitting *any* taxes, to be exercised according to *his* pleasure or judgment;—the consequences of the application hereafter to be made of these new doctrines,

no living eye can discern, nor human thought measure. "Who will provide a chart and compass for the wide uncertain sea that lies before us in the immediate future? Who shall determine the currents that shall flow from the event of this controversy? Who measure their force? Who assume to control the storms that it may breed?" *(Ibid.)*

"If we enlarge the scope of our responsibility and of our vision, and take in the great subjects that have been constantly pressing upon our minds, who is there so sagacious in human affairs, and so confident of his sagacity; who so circumspect in treading among grave responsibilities, and so assured of his circumspection; who so bold in his forecast of the future, and so approved in his prescience, as to see, and to see clearly, through this day's business?" *(Ib.)*

The controverted provisions of this bill constitute "a new departure" in our legislation. At every step, we tread upon unknown and treacherous ground. A century's experience assures us that the old paths are safe. *Stare super vias antiquas.*

Against these grave considerations, which certainly do antagonize this law, appellee's brief interjects throughout the argument vague, ominous phrases—such as "soundest public policy;"—"good faith to 60,000,000 of people who have acted;"—"financial security of the government"—"life-blood of the nation," etc. etc.—the foundation for which we now propose seriously to examine.

If well founded, they would amount to nothing more than an unnecessary invitation to the court to most carefully consider its application to the present issues of the established canons of construction; since (as already noticed) they are ephemeral, incident only to this particular statute, and in nowise pertaining to those constitutional limitations of power which are involved in the decision of this case.

If we succeed in our expectation of showing them to be wholly unfounded, they become ineffective for any purpose; leaving the construction of the pertinent provisions of the constitution to be decided strictly as a question of law, free from all extraneous influences. As reasons for preferring one conclusion to another, these suggestions of appellee are the mere dust of the struggle, settling in the scales of justice without disturbing their equal poise.

The first three of the above-quoted expressions are found upon page 43 of appellee's brief. We will treat them as independent propositions, *innuendoed* under cover of a phrase.

1. "*Soundest public policy!*"—

This is as unfounded in its assumption as it is impertinent to the issue. The question is not one of policy, but of power. If it were one of policy, how can it be so confidently assumed that it is "the soundest" policy for the people to be subjected to a law which (in the form in which it is enforced) never had the approval of their representatives? one of its chiefest purposes being to accomplish what this court has denounced as "robbery" and "despotism." (20 Wall. 663 and 110 U. S. 536-7.)

If we *can* be robbed constitutionally, or constitutionally have our property "subject to the absolute disposition and unlimited control of even the most democratic depositary of power" (*Ib.*), it is useless to sugar-coat the bitter pill with any such honied words as "soundest public policy," etc.

(2.) "*Good faith to 60,000,000 of people who have acted under the law.*"

This is another rhetorical flourish, signifying nothing. "Good faith" can never require the continuance of an unconstitutional law; and if constitutional, it stands; but such 'good faith' is no element in determining its construction.

The ground of the claim is, because they "have acted" under it. If this were any reason for the continuance of a law, it should be much more effective upon a legislature than with the Court. Then, whatever once appeared upon the statute-book should remain there as unchangeable as the law of the Medes and Persians, its claim to immutability fortified by every year that protracted its existence!

It is another outcropping of the 'moral obligation' theory, more elaborately stated upon page 84 of appellee's brief, and which we have already considered. (*Ante*, p. .)

The only way the whole population can act under a law is by obeying it, or expressing their view of it at the polls. This latter the people did, within one month after it went into effect, condemning it and its promotors.

The only people who act under it *directly* are the importers; and they have done so compulsorily and under protest.

(3.) "*Financial security of the Government.*

The actual financial history of the past year makes the appellee's use of this phrase almost seem ironical.

The bonds of the United States which matured within the last half-year went unpaid, because of lack of funds wherewith to pay them. Without any authority of law, except the supreme one of absolute necessity, the Secretary 'extended' these bonds. The modern theory is, that any officer may do what he considers for the general welfare of the United States. It was heralded as a triumph of financial skill, that he succeeded in extending them at a much lower (and very low) rate of interest. Undoubtedly, the Secretary did extricate himself very skillfully from the embarrassing position in which the legislation of the last Congress placed him. Still, the fact remains that, after twenty-five years of undisturbed peace and unex-

ampled prosperity, the aid of banks and bankers was solicited to procure for the United States (on most favorable terms) an extension upon its paper then maturing, which ought to have been paid, and would have been paid but for this legislation. If it was an achievement in finance for the Secretary, *sua sponte*, to reduce the interest upon our debt to two per cent. it would have been a better one for Congress to have reduced it to nothing by allowing the principal debt to be paid when due. This would have occurred, had the last Congress done nothing (in the shape of this act) to prevent. Yet this tariff, which placed us in the attitude of an insolvent debtor, is spoken of as "the financial security of the government."

If this bill never passed, or fails as a statute, the act of 1883 stands. Hence, it is *comparatively* that this question of "the financial security of the government" ought to be considered.

The appellee states (p. 61) that this bill throws off $60,000,000 of duty from sugar.

This act was approved Oct. 1, 1890. For the year ending with the preceding day (Sept. 30, 1890) the total amount of duties collected was $237,281,350. For the year ending Sept. 1891, instead of the natural increase under the act of 1883, it was $192,849,219! Of this latter sum, nearly $35,000,000 was collected (on goods in bond and tin plate) under the act of 1883; leaving a difference of almost $80,000,000 of annual revenue under the two acts. If the receipts of 1890 (to Sept. 30) were abnormal, deduct, if you please, $20,000,000, to bring them to those of 1889, and there is still a falling off of $60,000,000; the figures of the loss of duty upon sugar, as stated by appellee. (P. 61).

The question now is not whether this reduction was otherwise beneficial or desirable; but how it affects "the financial security of the government"—to enable it to meet its necessary annual expenses and such por-

tion of the public debt maturing as *Congress* has made no provision to renew or 'extend.'

The question is, which affords the best "financial security" for this purpose; a tariff netting from $220,000,000 to $237,000,000 a year, or one that nets but (as estimated) $180,000,000. For November, customs receipts will not be *over* $14,000,000.

To make the comparison fairer, and fully exhibit the character of this act of 1890 as a "financial security," we must again notice the sugar-bounties it directs to be paid, indefinite in amount and unlimited in duration. Appellee says (p. 60) it now amounts to but 2% of our national income, and that if the act be on its account unconstitutional, the Court ought not to say so, "it is such a little one."

Even if these figures were accurate (instead of exaggerating income and diminishing bounty-amount) they would not affect the principle at all, nor fairly indicate the extent of future disbursements of bounty. This year they approximate ten millions; but the commissioner reports that less than one-fifth of the maple-sugar of the country has claimed the bounty this year. All classes will annually increase their demand. It is the object, as well as effect, of the law that they should.

Appellee's argument (at p. 73), if it mean anything, implies that because France and Germany pay $45,600,000 per annum, we should do at least as much "to offset the encouragement of the same industry in other countries." Having a population, soon sure to exceed theirs combined, the inference is we should pay more than they, especially that our labor may be better paid. With the vast tracts of cheap lands, on which the cane, the maple and the beet can be easily raised; and, with our enterprising spirit, sugar enough will be raised in a few years to exhaust the whole revenue from customs.

Contrasted with the annually increasing and never-

ending demand for sugar-bounty (even if no other article is thus 'encouraged') the $15,000,000 or (at the outside) $20,000,000 illegally exacted from imports under this act sink into insignificance.

The argument (upon p. 73, appellee's brief) from the example of European powers would be equally applicable in behalf of a standing army; for their sugar-bounties are just much an incident of their belligerent position toward each other as is their armies. Everybody knows the circumstances under which they were originated in France, by the despotic will of the Emperor. The question is not what *unlimited* power may undertake, but what is permitted to defined, delegated, circumscribed authority.

This distinctly marks the issue between us; for it is very significant that, to justify this bounty, appellee is *compelled* to argue (pp. 64 to 85) that the taxing-power in Congress is unlimited, constituting what this Court has twice denominated "the despotism of the many." (20 Wall. 662; 110 U. S. 537.)

It is not true but a "wild contention," that this act "for now more than a year, has furnished the life-blood to the government," (Appellee's Br. p. 60) any more than it has been its 'financial security'—for these phrases mean the same thing.

The "life-blood" of the country is the enterprise, the spirit, the productive labor of the country; a sufficient quantity of which, for *strictly* governmental purposes, can equally as well (and better) be drawn by the act of 1883, as by this of 1890. Neither this nor any other statute creates 'life-blood'; but that of 1883 is the lancet of the physician, and this of 1890 the sucking of a vampire now first fattening itself upon public 'life-blood,' with an appetite that will surely grow with what it feeds upon.

Though some inconveniences should follow from adherence to the written constitution, that circumstance cannot weigh with the court. (3 N. Y. 568; 6 Ind. 501.) But we believe them to be imaginary or exaggerated: not to be for a moment weighed against the concession of unlimited power to *any* branch of the government; especially the unrestrained taxing power to Congress. (103 U. S. 191–3.) Let "diversified industries" (Appellee's brief, p. 75) be encouraged just as they have heretofore been; by the wise adjustment of those burdens that the existence of the government require to be borne, and which must be placed somewhere; not by creating additional, unnecessary burdens, in the shape of gifts to a favored class, who will enjoy the fruit of other men's toil and eat their bread by the sweat of the multitude.

EDWIN B. SMITH,
STEPHEN G. CLARKE,
Of Counsel.

Office Supreme Court U. S.
FILED.
NOV 30 1891
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

THE MICHIGAN DAIRY COMPANY AND DAVID P. CLAY, APPELLANTS,

v.

JAMES W. CONVERSE, APPELLEE.

No. 1398.

Appeal from the Circuit Court of the United States for the Western District of Michigan, Southern Division.

And now comes said James W. Converse, the appellee in this cause, by Duane E. Fox, his counsel, appearing specially for that purpose, and shows that on application of counsel for said appellee this cause was docketed and dismissed by the clerk, in vacation, on October 5, 1891, pursuant to section 1 of Rule 9 of the rules of this Court, and moves the Court for an order directing the clerk to issue a mandate, with costs, as provided by subdivision 1 of Rule 24 of this Court, upon such dismissal, and, if such mandate be denied, said appellee moves the Court for an order directing the clerk to furnish him with a certified copy of the certificate of the clerk of the Circuit Court of the United States for the Western District of Michigan, Southern Division, in this cause, together with the order of dismissal endorsed thereon by the clerk of this Court.

DUANE E. FOX,
Counsel for Appellee.

IN SUPPORT OF MOTION.

The record shows that an appeal was taken in this case on March 8, 1891; that the time for filing the record upon such appeal with the clerk of this Court was afterwards extended, by order of the district judge, to August 20, 1891; that the case was not docketed by the appellant, and that, on October 5, 1891, the clerk, under subdivision 1 of rule 9, as amended at the last term, docketed and dismissed the case in vacation, on written request of counsel for appellee.

We are aware that the practice of this Court has been, in cases docketed and dismissed under the old rules, not to issue mandate until the close of the term. In view of this practice, the clerk refuses to issue mandate, or to furnish appellee with a certified copy of the certificate from the clerk of the Court below, with his endorsement thereon.

We have carefully examined the change in the rules which allows a case to be docketed and dismissed by the clerk in vacation, and have come to the conclusion that the Court would not have amended the rule unless it had been the intention to change the practice. The amendment was undoubtedly intended to enable an appellee to get a case in which the appeal was not perfected back to the lower court sooner than it could be done under the old rule; and if a mandate cannot issue in such a case as this until the close of the term, nothing has been gained by the amendment. This will be seen clearly by outlining the proceedings in such a case under the old and under the new rule.

The old rule required the record to be filed in the clerk's office within the first six days of the next term after the

appeal was taken, and that the appellant should docket the case. If either was not done, the Court, on motion of the appellee, would docket and dismiss the case and at the close of the term issue a mandate to the lower court. Hence the appellee in such a case could get his mandate at the close of the first term after the appeal was taken, and not sooner.

The rule as amended gives the appellant thirty days after taking his appeal to file the record with the clerk of the Supreme Court and docket the case. This time can be extended, but if the record is not filed with the clerk and the case docketed within the thirty days or the extended time, the clerk may *in vacation* enter an order docketing and dismissing it. This is what happened in the present case, and the clerk's order was made before the commencement of the present term. Now, if we are unable to get a mandate until the close of this term, it is apparent that the Court, in changing the rule, really did nothing to expedite appeals or to relieve an appellee in a case of a frivolous appeal. The rule might just as well have remained as it was, if in a case like this a mandate cannot issue until the close of the term.

We respectfully submit that, in order to render effective the change in the rules, mandate should be promptly issued by the clerk in this and similar cases.

DUANE E. FOX,
Counsel for Appellee.

Supreme Court U. S.
FILED,
DEC 1 1891

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

BOYD, SUTTON & CO. ET AL. vs. THE UNITED STATES. — No. 1049. No. 1050. No. 1052.

TARIFF ACT BRIEF APPENDIX.

BOUNTY AND RECIPROCITY.

ON BEHALF OF THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

BOYD, SUTTON & CO. ET AL.) No. 1049.
vs.) No. 1050.
THE UNITED STATES.) No. 1052.

TARIFF ACT BRIEF APPENDIX.

BOUNTY AND RECIPROCITY.

ON BEHALF OF THE UNITED STATES.

Act July 4, 1789, provides for a discount of 10 per cent on duties in favor American shipping.

Act of February 16, 1792 (1 Stat., p. 229, § 1), provides for a bounty on every fishing vessel of 20 and not over 30 tons, $1.50 per ton; above 30 tons, $2.50 per ton; under 20 and over 5 tons, $1 per ton.

Act of July 4, 1789 (1 Stat., p. 27, § 5), provides that a discount of 10 per cent on all duties imposed by that act shall be allowed on all goods, wares, and mer-

chandises imported in vessels built in the United States, and wholly the property of a citizen or citizens thereof, or in vessels built in foreign countries, and on the 16th of May last, wholly the property of a citizen or citizens of the United States, and so continuing till the time of importation.

Act of March 2, 1799 (1 Stat., p. 69, § 83), provides for a bounty of 30 cents per barrel upon all pickled fish of the fisheries of the United States, and on all provisions salted in the United States, dried fish excepted, a bounty of 25 cents per barrel.

Act of July 29, 1813 (3 Stat. L., p. 51, §§ 5 and 6), provides that from and after the last day of December, 1814, there shall be paid on the last day of December, annually, to the owner of every fishing boat or vessel of more than 5 tons and less than 20 tons, or to his agent or lawful representative, by the collector of the district where such boat or vessel may belong, the sum of $1.60 upon every ton and measurement of such boat or vessel, which allowance shall be accounted for as part of the proceeds of the fares of said boat or vessel, and shall accordingly be so divided among all such persons interested therein.

Act of March 1, 1817 (3 Stat. L., p. 351, § 3), provides that after the 30th of September next the bounties and allowances now granted by law to the owners of boats or vessels engaged in the fisheries shall be paid only on boats or vessels whose officers, and at least three-fourths of the crews of which, shall be proved to the satisfaction of the collector of the district where such boat or vessel

shall belong to be citizens of the United States or persons not the subject of any foreign prince or state.

Act of March 3, 1819 (3 Stat., p. 520), provides for a bounty on all fishing vessels of over 5 tons burden and not exceeding 30 tons $3.50 per ton; on all above 30 tons, $4; and if above 30 tons and having a crew of ten persons and have actually been employed in the cod-fishery at sea for a term of three and one-half months at least, but less than four months, $3.50 per ton, provided that the allowance on any one vessel for one season shall not exceed $360.

RECIPROCITY.

After the embargo acts the following statutes were passed:

The act of March 3, 1815, entitled—

> An act to repeal so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise imported into the United States, as imposes a discriminating duty on tonnage, between foreign vessels and vessels of the United States, and between goods imported into the United States and vessels of the United States.

reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:* That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty on tonnage between foreign vessels and vessels of the United States, be, and the same are hereby, repealed,

so far as the same respects the produce or manufacture of the nation to which such foreign ships or vessels may belong; such repeal to take effect in favor of any foreign nation, whenever the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. (3 Stat., p. 324).

For proclamation see p. 794, 3 Stat.

The act of March 3, 1817, entitled "An act to regulate the trade in plaster of Paris," and prohibiting the importation in foreign vessels from countries whence vessels of the United States are not allowed to bring it, provides as follows:

SEC. 2. *And be it further enacted*, That this act shall continue and be in force five years from the thirty-first day of January, one thousand eight hundred and seventeen: Provided, nevertheless, that if any foreign nation or its dependencies which have now in force regulations on the subject of the trade in plaster of Paris prohibiting the exportation thereof to certain parts of the United States shall discontinue such regulations, the President of the United States is hereby authorized to declare that fact by his proclamation, and the restrictions imposed by this act shall, from the date of such proclamation, cease and be discontinued in relation to the nation, or its dependencies, discontinuing such regulation. (3 Stat., p. 361.)

For proclamation see page 791.

The third section of the act of March 1, 1823, entitled "An act to regulate the commercial intercourse between

the United States and certain British colonial ports," reads as follows:

> *And be it further enacted*, That, on proof being given to the President of the United States, satisfactory to him, that upon the vessels of the United States admitted into the above enumerated British colonial ports, and upon any goods, wares, or merchandise imported therein in the said vessels, no other or higher duties of tonnage or impost, and no other charges of any kind are levied or exacted than upon British vessels, or upon the like goods, wares, and merchandise imported into the said colonial ports from elsewhere, it should and may be lawful for the President of the United States to issue his proclamation, declaring that no other or higher duty or impost or tonnage, and no other or higher duty or charge of any kind, upon any goods, wares, or merchandise, imported from the above-enumerated British colonial ports, in British vessels, shall be levied or exacted in any of the ports of the United States (except the ports in the Territory of Florida) than upon the vessels of the United States, and upon the like goods, wares, or merchandise imported into the ports of the United States in the same: *Provided, always*, That until such proofs shall be given British vessels coming from the said British colonial ports, and the goods, wares, and merchandise imported in the same into the United States shall continue to pay the foreign tonnage duty, and the additional duties upon goods, wares, and merchandise, imported in foreign vessels, prescribed by the act to regulate the duties on imports and tonnage, approved the twenty-seventh of April, one thousand eight hundred and sixteen.

For proclamation see p. 796, 3 Stat.

Act of January 7, 1824, entitled "An act concerning discriminating duties of tonnage and imposts," provides for suspension of discriminating duties against any foreign nation upon evidence being given to the President of the United States that no discriminating duties of tonnage or imposts are imposed or levied within the ports of said nations upon vessels, merchandise, or produce of the United States, the President to cause such suspension by proclamation, and the same to continue so long as the reciprocal exemption shall continue. (4 Stat., p. 2, § 4.)

For proclamation see same volume, p. 814.

April 20, 1826, "An act to equalize the duties on vessels of the Republic of Colombia, and their cargoes," was passed. After providing for the equalization of duties on vessels and cargoes of the Republic of Colombia, section 3 enacts:

> That this act shall continue and be in force during the time that the equality for which it provides shall, in all respects, be reciprocated in the ports of the Republic of Colombia; and if, at any time hereafter, the said equality shall not be reciprocated in the ports of the said Republic, the President may, and he is hereby authorized to, issue his proclamation declaring that fact, whereupon this act shall cease and determine. (Vol. 4, p. 154.)

May 24, 1828, a like act was passed. Section 4 reads as follows:

> *And be it further enacted*, That so much of this act as relates to Prussian vessels and their cargoes, shall continue and be in force during the time that the equality for which it provides shall in all respects be reciprocated in the courts of Prussia, and

her dominions; and if at any time hereafter the said equality shall not be reciprocated in the ports of Prussia and her dominions, the President may, and he is hereby authorized to issue his proclamation declaring that fact, and thereupon so much of this act as relates to Prussian vessels, and their cargoes, shall cease and determine. (4 Stat., p. 308.)

Proclamation, p. 814.

Act of May 31, 1830, providing that tonnage duties shall be abolished as to American vessels in certain cases, by section 2 provides as follows:

And be it further enacted, That, from and after the said first day of April next, all acts and parts of acts imposing duties upon the tonnage of the ships and vessels of any foreign nation, so far as the same relate to the imposition of such duties, shall be repealed; that the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nation, so far as they operate to the disadvantage of the United States, have been abolished. (4 Stat., p. 425.)

May 19, 1832, was passed "An act for giving effect to commercial arrangements between the United States and the Republic of Colombia." After providing that vessels of that Republic and their cargoes coming directly from the ports of that nation to the United States shall pay no greater rates than are levied on vessels of the United States, provides by section 2 as follows:

And be it further enacted, That the restriction of coming direct from a port in Colombia, contained in the preceding section, shall be taken off, as soon as the President shall receive satisfactory evidence that a like restriction is taken off from vessels of the

United States in the ports of the Republic of Colombia, and shall make known the same by his proclamation declaring the fact.

SEC. 3. *And be it further enacted*, That if the President of the United States shall at any time receive satisfactory information that the privileges allowed or which may be allowed to American vessels and their cargoes in the ports of Colombia, corresponding with those extended, or to be extended by this act, to Colombian vessels and their cargoes in the ports of the United States, shall have been revoked or annulled, he is hereby authorized, by proclamation, to suspend the operation of either or both of the provisions of this act, as the case may be, and to withhold any or all the privileges allowed or to be allowed to Colombian vessels or their cargoes. (4 Stat., p. 515.)

A like statute with like powers to the President is embodied in "An act concerning tonnage duties on Spanish vessels," passed July 13, 1832 (4 Stat., p. 578):

SEC. 3. *Be it further enacted*, That whenever the President shall be satisfied that the discriminating or countervailing duties of tonnage levied by any foreign nations on the ships or vessels of the United States shall have been abolished, he may direct that the tonnage duty on the vessels of such nations shall cease to be levied in the ports of the United States; and cause any duties of tonnage that may have been levied on the vessels of such nations, subsequent to the abolition of its discriminating duties of tonnage, to be refunded.

The act of June 30, 1834, providing that Spanish vessels from certain ports shall pay a tonnage duty equal to

the discriminating duties of American bottoms by section 5, provides as follows:

> *And be it further enacted*, That whenever the President of the United States shall be satisfied that the discriminating duties in favor of Spanish bottoms, levied upon the cargoes of American vessels in the ports of Cuba and Porto Rico, have been abolished, or whenever, in his opinion, a satisfactory arrangement upon the subject of the said duties shall have been made between the United States and Spain, the President is hereby authorized to declare the same by proclamation, and thereupon this act shall cease to have any further force or effect. (4 Stat., p. 741).

The act of March 2, 1837, entitled "An act respecting discriminating duties upon Dutch and Belgian vessels and their cargoes," reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the same duties shall be levied and collected in the ports of the United States on Belgian vessels and their cargoes which are now levied on Dutch vessels and their cargoes; but nothing in this act contained shall be construed to prevent the President of the United States from enforcing, whensoever he may deem proper, both against Dutch and Belgian vessels, or either of them, and their cargoes, the provisions of the third section of the act entitled, "An act concerning discriminating duties of tonnage and imposts," approved the seventh day of January, one thousand eight hundred and twenty-four. (5 Stat., p. 152.)

"An act regulating commercial intercourse with the islands of Miquelon and St. Pierre," passed March 3, 1845, and providing for the admission of French ships of

said islands on the payment of same duties as American ships, contains the following proviso:

> *Provided*, That this act shall not take effect until the President of the United States shall have received satisfactory information that similar privileges have been allowed to American vessels and their cargoes at said islands by the Government of France, and shall have made proclamation accordingly, and whenever said privileges shall have been revoked or annulled the President is hereby authorized, by proclamation, to suspend the operation of this act. (5 Stat., p. 748.)

For list of acts imposing or authorizing the imposition or removal or suspension of discriminating duties, see 4 Statutes, page 2.

Under these statutes proclamations were issued by nearly every President from Monroe to Cleveland.

September 9, 1850, Congress passed "An act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States, and to establish a Territorial government for New Mexico."

The eighteenth section of said act reads as follows:

> *And be it further enacted*, That the provisions of this act be, and they are hereby, suspended until the boundary between the United States and the State of Texas shall be adjusted; and when such adjustment shall have been effected, the President of the United States shall issue his proclamation, declaring this act to be in full force and operation, and shall proceed to appoint the officers herein provided to be appointed in and for said Territory. (9 Stats., p. 452.)

For proclamation see same volume, p. 1005.

And if the constitution and governments of said proposed States are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted constitutions and formed State governments as herein provided, shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the principal States from and after the date of said proclamation. (25 Stat. L., § 8, p. 679.)